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99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPT.
99-727

OMNIBUS BUDGET RECONCILIATION ACT OF 1986

REPORT

OF THE

COMMITTEE ON THE BUDGET HOUSE OF REPRESENTATIVES

TO ACCOMPANY

H.R. 5300

A BILL TO PROVIDE FOR RECONCILIATION PURSUANT TO SECTION 2 OF THE FIRST CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 1986

together with

SUPPLEMENTAL, ADDITIONAL, AND MINORITY VIEWS

JULY 31, 1986.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
99-727

PROVIDING FOR RECONCILIATION PURSUANT TO SECTION 2 OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR THE FISCAL YEAR 1987

JULY 31, 1986.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GRAY of Pennsylvania, from the Committee on the Budget, submitted the following

REPORT

together with

SUPPLEMENTAL, ADDITIONAL, AND MINORITY VIEWS

[To accompany H.R. 5300]

[Including cost estimates of the Congressional Budget Office]

STATEMENT OF THE COMMITTEE ON THE BUDGET

The Committee on the Budget to whom reconciliation recommendations were submitted pursuant to section 2 of Senate Resolution 120, the Concurrent Resolution on the Budget for Fiscal Year 1987, having considered the same, reports a bill embodying those recommendations.

VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote of the Committee in reporting the bill. H.R. 5300 was ordered reported by the Committee on July 31, 1986, by a voice vote, with a quorum being present.

BUDGET AUTHORITY AND COST ESTIMATES, INCLUDING ESTIMATES OF CONGRESSIONAL BUDGET OFFICE

In compliance with clause 7(a) of rule XIII and clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee provides that information furnished by the Congressional Budget Office on H.R. 5300, and required to be included therein, will appear in the explanation of the various titles contained in the bill.

INFLATIONARY IMPACT STATEMENT

With respect to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 5300 would not have an inflationary impact on prices and costs in the operation of the general economy.

Correspondence Regarding Reconciliation Legislation Not Included in H.R. 5300, as Reported

COMMITTEE ON EDUCATION AND LABOR,
HOUSE OF REPRESENTATIVES,
Washington, DC, July 9, 1986.

Congressman WILLIAM H. GRAY, III,
Chairman, House Budget Committee,
Washington, DC.

DEAR MR. CHAIRMAN: We are writing to inform you of our plans for meeting the Reconciliation instructions for the Committee on Education and Labor included in the Budget Resolution for FY1987.

As we understand it, our Committee is required to make the following savings:

[By fiscal year, in millions of dollars]

	1987		1988		1989		Total	
	BA	0	BA	0	BA	0	BA	0
Guaranteed student loans	−25	−25	−150	−135	−250	−235	−425	−395
Title VII programs		−579		−314	0	+94	0	−799

Since the Education and Labor Committee will soon go to conference with the Senate on the reauthorization of the Higher Education Act, it is our intention to comply with the Budget Resolution in the context of that Conference Committee. It is clear to us that revising these programs twice (and virtually simultaneously)—first in a separate Reconciliation bill and then in the reauthorization process—would be needlessly confusing.

Also, it is our understanding that the Conference Committee will have to develop legislation providing for the availability for sale of college housing and academic facilities loans. Because the Secretary of Education already has the authority, under current law, to sell these Federal assets, we intend to comply with our Reconciliation instruction by simply reaffirming this authority in the Conference Report or the Statement of Managers.

We look forward to working with you to achieve these savings in a fair, equitable, and timely manner.

Sincerely,

AUGUSTUS HAWKINS,

Chairman, House Committee on Education and Labor.

WILLIAM D. FORD,

Chairman, Subcommittee on Postsecondary Education.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE BUDGET,
Washington, DC, July 24, 1986.

Hon. WILLIAM D. FORD,
Chairman, Subcommittee on Postsecondary Education, Committee on Education and Labor, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of July 9 concerning your plans for meeting the reconciliation instructions for the Committee on Education and Labor included in the budget resolution for fiscal year 1987.

The budget resolution assumed that your committee would achieve $395 million in savings in the Guaranteed Student Loan Program and $799 million in savings in the Title VII programs over the next three fiscal years. Since these savings have already been reported by the Education and Labor Committee, have passed the House, and are, in fact, in conference with the Senate at this time, I have no problems with your committee achieving its reconciliation savings in the context of that conference on H.R. 3700, Higher Education Act Amendments. I cannot stress enough the importance of the agreement being completed before the August recess in order for your savings to count in the August 15 snapshot towards Congress achieving the Gramm-Rudman deficit target in fiscal year 1987.

I would welcome the opportunity to meet with you, should you have any questions or if I might assist you in any way in your response to the reconciliation process.

With best wishes,

Sincerely,

WILLIAM H. GRAY, III, *Chairman.*

TITLE II—COMMITTEE ON AGRICULTURE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, DC, July 28, 1986.

Hon. WILLIAM H. GRAY, III,
Chairman, House Committee on the Budget,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I am transmitting herewith the recommendations of the Committee on Agriculture with respect to the reconciliation bill for fiscal year 1987, provided for under Senate Concurrent Resolution 120.

I am pleased to report that the Committee on Agriculture has met the obligation required of it under section 2(b) of S. Con. Res. 120.

Sincerely,

E (KIKA) DE LA GARZA, *Chairman.*

Enclosure.

REPORT TO ACCOMPANY RECOMMENDATIONS FROM THE HOUSE COMMITTEE ON AGRICULTURE

BRIEF SUMMARY

Title II contains provisions that will make budget savings as follows:

(1) The Secretary of Agriculture must sell loan assets held in the Rural Development Insurance Fund, under terms set by the Secretary, to realize net proceeds of not less than $552,000,000 in fiscal year 1988 and $547,000,000 in fiscal year 1989.

(2) The Administrator of the Rural Electrification Administration must permit prepayments of certain loans made by the Federal Financing Bank and guaranteed under the Rural Electrification Act of 1936. The cumulative amount of permitted principal prepayments in fiscal year 1986 and 1987 is to be not less than $2,415,000,000, which will realize $555,000,000 in budget savings in fiscal year 1987.

(3) Amendments to the Federal Meat Inspection Act would authorize the Secretary of Agriculture to issue rules and regulations to provide for less-than-continuous inspections of processed meat products, while providing for added enforcement methods and procedures. Budget savings of $7,500,000 will be achieved over fiscal years 1987, 1988, and 1989.

PURPOSE AND NEED

I.

The purpose of title II, as reported by the Committee on Agriculture, is to meet the budget reduction targets established in the Conference Agreement on the First Concurrent Resolution on the Budget for Fiscal Year 1987, as follows:

[In millions of dollars]

	1987	1988	1989
Target	555	549	543
Sell RDIF loan assets		552	547
Rural electrification refinancing	555	−4	−4
Federal meat inspection [1]	.5	2.5	4.5
Total direct spending reduction	556	552	548

[1] Not direct spending savings.

II.

Subtitle A—Sale of Notes Held in the Rural Development Insurance Fund

Subtitle A of title II provides for sales of loans from the Rural Development Insurance Fund in fiscal years 1988 and 1989. The

Committee did not recommend the sale of notes in fiscal year 1987 in order to provide the Farmers Home Administration (FmHA) time to exercise the proper care to ensure that maximum value will be obtained for notes in the Fund.

Subtitle A instructs the Secretary of Agriculture to sell loans from the Rural Development Insurance Fund in such amounts that the net proceeds will equal $552 million in 1988 and $547 million in 1989. It also requires the Secretary to sell the loans at their current term, period, interest rate and with no provision for increasing that rate, should the loan agreement contain an interest graduation clause. In addition, no loans could be sold to the public from the Agriculture Credit Insurance Fund without specific authorization from Congress.

Subtitle A would not preclude any borrower from further FmHA borrowing because a loan it is a party to is sold under this authority.

The Committee encourages the Secretary to make the loans conform to credit instruments for which there are already markets in order to yield the greatest value from sale. Sound marketing of these loans will establish a secondary market for future loan sales. Therefore, the Committee provides the following advisory instructions:

> FmHA should centralize its loan files so that prospective purchasers and their agents can review and assess each loan to be sold.
>
> FmHA should collect and provide background data on borrowers' economic and financial status.
>
> FmHA should make standard warranties and respresentations about the quality of the loans offered for sale, such as the timeliness of payments, default status, restrictions on transfer, and accuracy of the information provided, including the obligation to buy back any loans.
>
> FmHA may structure separate pools of loans by maturity, geographical characteristic, credit rating, or other criteria.
>
> FmHA may obtain private credit ratings or bond insurance to enhance marketability.
>
> FmHA may establish a minimum price below which loans will not be sold.
>
> FmHA may continue to provide financial and engineering advice to borrowers whose loans have been sold.

Subtitle B—Prepayment of REA Loans

Subtitle B will adopt the supplemental appropriations (P.L. 99-349) language concerning prepayment of loans made by the Federal Financing Bank to rural electric and telephone cooperatives without penalty to the cooperatives, but add new provisions relating to the amounts of prepayment.

The Committee proposes, as the authorizing committee of jurisdiction, that specific guidance be given as to the amount of loans that may be prepaid without penalty rather than the indefinite language contained in P.L. 99-349. The Committee recommendation will continue to permit cooperatives that are threatened by bankruptcy, because of outstanding loans issued at high interest rates, to refinance these loans through a private lender with the benefit of a government guarantee.

Subtitle C—Federal Meat Inspection

The purpose of the amendments to the Federal Meat Inspection Act ("the Act") proposed in subtitle C is to revise and update the Act and produce total estimated budget savings in fiscal years 1987, 1988, and 1989 of $7.5 million.

Subtitle C, the "Processed Products Inspection Improvements Act of 1986", is needed to update the Act by granting the Secretary of Agriculture the discretion to allocate resources in a manner that will both ensure and improve public safety.

The basic Federal meat inspection system has not been changed since 1906. Under the provisions of the Act, as amended by the Wholesome Meat Act of 1967, the Secretary is required to provide inspectors to visually examine livestock before slaughter, carcasses after slaughter, and the processing of the meat and meat food products derived from the carcasses. Notwithstanding that meat has been previously inspected both at the time of slaughter and at a subsequent stage, the Secretary is required to provide inspectors for visual examination of the meat if further processed on at least a daily basis.

Subtitle C is designed to eliminate redundant inspection by granting the Secretary the discretion to determine the intensity and frequency of the physical inspection of the processing of meat and meat products and to use new innovative techniques to assure the public that the meat it consumes is both wholesome and safe. Importantly, subtitle C does not change the manner of inspecting livestock at time of slaughter, nor does it compel the Secretary to amend current inspection techniques for all processing activities or at all establishments. Similarily, subtitle C will not amend current provisions of the Act that require the Secretary, at the Government's expense, to provide inspection to qualified applicants.

Subtitle C is needed to harmonize legal requirements and scientific innovation. Since the Act was last amended in 1967, new processing control procedures have been introduced that ensure product wholesomeness. The information generated by these controls can tell more about wholesomeness of a particular product than is readily available to the in-plant inspector who visually inspects the product. By moving away from visual inspection and relying on the control procedures mentioned above, the Secretary can conserve resources without jeopardizing public health or public confidence in the meat inspection system.

Additionally, subtitle C will strengthen the Secretary's authority to remove from the meat industry individuals and companies that threaten the public health and undermine public confidence in the meat supply. Under subtitle C, the Secretary must take prompt action to eliminate threats to the public while providing due process protections to ensure that severe sanctions are not needlessly or unfairly imposed.

Intensity and frequency of processing inspection

Subtitle C will amend section 6 of the Act to establish criteria to be considered by the Secretary in promulgating regulations to determine the intensity and frequency of inspection in establishments processing meat and meat food products. The purpose of this provision is to increase the Secretary's flexibility in using inspection resources to improve the efficiency of inspection techniques at processing plants.

Subtitle C will not mandate a total revision of processing inspection at all establishments. No establishment will be obligated to change from the current inspection program. The Secretary simply will be given discretion to vary the frequency and intensity of inspection. Subtitle C will make no changes in the Act that affect a qualified establishment's right to receive the amount of inspection from the Department necessary to meet the establishment's production requirements.

The criteria established under subtitle C are:

(1) The nature and frequency of the establishment's processing operations.

(2) The adequacy and reliability of the establishment's product monitoring systems.

(3) The establishment's history of compliance with inspection requirements.

(4) Such other factors as the Secretary deems appropriate.

These criteria are designed to serve as tools in measuring a plant's ability and dedication to monitoring its own production processes and its willingness to ensure that only products that are in full compliance with the Act are offered to the public.

The first criterion addresses the potential risk to the public health inherent in each processing operation. It takes into account factors such as the complexity of the operation and the type of product produced.

The second criterion addresses an establishment's product monitoring system. Quality control systems establish well-defined criteria and procedures for the manufacturing process, for evaluating finished products, and for recording the data and information detailing the entire production process. Many meat processors have established such quality control systems to assist in controlling the production process. The adequacy and reliability of the establishment's quality control system is therefore a valuable tool in the assessment of a plant's ability to consistently produce products in compliance with the Act. Subtitle C would not mandate participation in a total quality control program as a prerequisite for less intensive inspection. It recognizes the fact that many different types of control mechanisms exist that are capable of ensuring compliance with the Act. This criterion would permit the development and implementation and evaluation of different types of voluntary programs to ensure production by industry of safe, wholesome, and properly labeled products.

The third criterion reflects the notion that the intensity and frequency of inspection visits might be closely related to the compliance history of the firm. Many companies have demonstrated that they can and will assume responsibility for producing products in compliance with inspection laws and regulations. Other establishments have a known background of marginal compliance. Only when an establishment's prior history domonstrates its ability or willingness to produce products in compliance with the Act would it be considered eligible for less intensive inspection.

Enhanced enforcement authority

Subtitle C will amend section 401 of the Act to provide the Secretary with additional authority to withdraw inspection from those individuals and companies who, by their actions and conduct, pose a current threat to the public health.

It also will amend section 401 of the Act to expand the Secretary's authority to withdraw inspection services from establishments or suspend individuals under the following limited and well-defined circumstances.

Temporary suspension of a responsibly connected individual pending hearing.—Subtitle C will authorize the Secretary to request an order from a Federal district court temporarily forbidding a responsibly connected individual who has been convicted of certain felonies from exercising operational control over the establishment or prohibiting the individual's continued presence at the establishment during the pendency of an administrative proceeding and any judicial review. The order would dissolve unless the Secretary institutes a proceeding to bar the individual within ninety days.

The Secretary would be granted this authority to deal with those cases where a responsibly connected individual's continued operational control or presence poses a direct and substantial threat to the public health or safety during the pendency of administrative proceeding.

If the conviction is for intentional adulteration under section 1(m)(8) of the Act with intent to defraud, the district court temporary order could issue if the court determines that continued consumer harm may exist because of the individual's control or presence. This provision is designed to deal with serious cases where the public health or well-being would be seriously jeopardized.

Judicial review of the Secretary's orders withdrawing inspection or suspension of a responsibly connected individuals.—Subtitle C will amend section 401 of the Act to vest jurisdiction in the court of appeals to review any final administrative order entered under current section 401 (or the new order against individuals described above) rather than in the district court, which is the current court with jurisdiction. This modification will streamline the appeals process and conform the Act to the Poultry Products Inspection Act.

Withdrawal of inspection or suspension of a responsibly connected individual for repeated violations.—Subtitle C will amend section 401 of the Act to provide a new basis for the Secretary to seek an order from a Federal district court to withdraw inspection or suspend a responsibly connected individual. It provides that the Secretary could seek a court order authorizing the withdrawal of inspection from any establishment or the suspension of a responsibly connected individual where the court finds that the repeated failure by the establishment or individual to comply with the Act poses a direct and substantial threat to public health and safety. The purpose of this provision is to provide the Secretary authority to respond promptly to withdraw inspection from an establishment or to prevent any individual from being responsibly connected with an establishment when a direct and substantial threat to the public health is posed.

Withdrawal for interfering with official duties.—Subtitle C will amend section 401 of the Act to authorize the Secretary to temporarily withdraw inspection service if an officer, employee, or agent of an establishment has threatened to forcibly assault or has forcibly assaulted, forcibly intimidated, or forcibly interfered with an employee conducting official duties at an establishment. The temporary withdrawal can occur only after an establishment is provided an opportunity for a hearing on the record. However, should the Secretary conclude that interim suspension of inspection services is necessary for the safety of the employee, suspension could occur prior to the hearing.

The withdrawal or suspension must be for that period of time necessary to ensure the safe and effective performance of official duties under the Act.

Both before and after hearing, the Secretary could continue or restore inspection services if the establishment provides adequate written assurances that the offending conduct will not reoccur.

Written notice of warning

Subtitle C will amend section 406 of the Act by adding criteria for the Secretary to use in determining whether an illegal violation should be prosecuted or whether the public interest would be adequately served by a written notice of warning. The purpose of this provision is to provide the Secretary with guidance on when a written notice of warning should be issued rather than referring a case for prosecution.

Reporting of violations

Subtitle C will amend section 406 of the Act to require the Secretary to provide notice to an establishment or individual of the Secretary's intent to report an alleged violation of the Act for prosecution and an opportunity to present orally or in writing the establishment's or individual's views with respect to the referral for prosecution.

This amendment is designed to conform the Act to similar provisions in other Federal laws. The Secretary will be authorized to promulgate regulations providing when such a notice and opportunity to present views will not be held. Notice and opportuniuty should be the general rule not the exception. Notice and opportunity will aid enforcement by eliminating unnecessary prosecutions and by making compliance by the establishment likely to occur in the future.

Related committee concerns

The Committee believes that passage of this legislation will make a substantial contribution to the development of a more effective, scientifically based meat inspection system. Toward this end, other related activities within the Department should be encouraged.

The Committee requests that the Secretary include in the annual report required by the Act (21 U.S.C. 691) actions proposed or taken to implement subtitle C, as well as other activities to modernize the Act, such as efforts to strengthen the national residue testing program and progress on an animal identification program. Furthermore, the report should include a description of efforts to minimize the effect of subtitle C on Department personnel.

National Residue Program

The Committee is aware of the 1985 study of the FSIS Meat and Poultry Inspection Program that was conducted by the National Academy of Sciences. The Academy found that the efficiency of the current system and its ability to protect the public health could be substantially improved by greater application of modern scientific techniques and use of contemporary information acquisition and retrieval facilities. Subsequently, a panel of Government scientists reviewed the Academy findings and essentially concurred in them.

Specifically, what is needed to improve the national residue program are better scientific tools for a prevention-based program so that more rapid testing can occur for a wider variety of residues. This will require a continuing research and development program.

Presently, the Food Safety and Inspection Service has three field laboratories all of which require a critical mass of scientists and technicians that needs enhancement. FSIS needs to strengthen its quantitative exposure assessment of residues in livestock and poultry products. This will involve the development of statistical methods and appropriate documentation for examining large, ever-changing populations of animals.

The national residue program must pursue new scientific objectives that would render a prevention-based program operable. This would enable the agency to continue and expand informational, educational, and cooperative programs for reducing and avoiding contaminating residues in livestock and poultry products.

The Committee expects the Department of Agriculture to reinvest a significant portion of the savings generated by the use of discretionary inspection under subtitle C to strengthening its national residue program. This is an important step in building and maintaining consumer confidence in the meat and poultry supply and assuring strong markets for United States farmers.

Animal Identification Program

The Department of Agriculture is also presently reviewing the question of mandatory identification of swine. Imposing such a requirement on federally inspected establishments would be consistent with recommendations made by the National Academy of Sciences and advance the Department's efforts to more effectively control and incidence of residues in swine. Priority attention should therefore be given to the development of a reliable traceback system in which both producers and packers play a part.

Effect on FSIS personnel resulting from the implementation of discretionary inspection

The Committee is aware that the implementation of discretionary inspection will lead to some restructuring of the FSIS workforce as the agency employs new methods of inspection to regulate the processed products industry. Employing the authority contained in this legislation, these newer, modern techniques will be more effective and more efficient.

The Committee has been assured by the Department of Agriculture that there will be no significant displacement of FSIS inspection personnel. Gains in efficiency will be achieved principally through attrition without the need for reductions in force. The Committee understands that some relocation of inspection personnel, at Government expense, might be necessary to maintain a balanced work force. However, the Committee expects FSIS management to use sound personnel practices and common sense in bringing about the changes.

The passage of this legislation will mark the beginning of a new era in improved consumer protection. it is tied closely to FSIS plans to upgrade the skill levels and knowledge of food inspectors assigned to processing plants by introducing a food technologist occupational series into the work force. This new occupational requirement is in response to the increasing need for an inspection force with the basic scientific skills and knowledge necessary for today's highly sophisticated, complex, and technical processing plant environment.

The Committee applauds these efforts, but expects plans to be balanced in terms of their effect on existing processing inspectors. For example, FSIS should provide retraining, to the extent possible, to those inspectors with the desire to invest in their own improvement. At the same time, flexible career ladders must be kept in place to ensure that opportunities for advancement are not arbitrarily closed.

Poultry inspection modernization

Subtitle C, giving the Department the authority to determine the nature and frequency of inspection in meat processing plants, is a major step forward in the modernization of the Nation's meat and poultry inspection systems. This change in the law will allow the Department of Agriculture to use its meat inspection resources more efficiently and effectively. As important as this step is, however, it represents but the first level of inspection modernization. In this regard, the poultry industry, with respect to which the Secretary already can assign the appropriate degree of inspection in processing operations, has advanced tremendously over the past 30 years, employing the latest in scientific technology. The ability of the inspection service to grow in efficiency along with the industry has been hampered, however, by current law that requires that each and every bird processed be inspected by the Government.

The Committee, accordingly, sets as a primary objective for next Congress the review of this bird-by-bird inspection system with a view toward steamlining it to provide the Secretary the flexibility to use poultry inspection resources more efficiently, without reducing consumer protection.

SECTION-BY-SECTION ANALYSIS OF TITLE II

Subtitle A—Sale of Notes Held in the Rural Development Insurance Fund

Section 2001. Sale of rural development notes

Section 2001(a) would require the Secretary of Agriculture, under terms prescribed by the Secretary, to sell notes held in the Rural Development Insurance Fund. The Rural Development Insurance Fund was created by and operates under section 309A of the Consolidated Farm and Rural Development Act.

Notes must be sold from the Fund in amounts to realize net proceeds of not less than $552,000,000 in fiscal year 1988, and $547,000,000 in fiscal year 1989.

Section 2001(b) would amend subsection (e) of section 309A of the Consolidated Farm and Rural Development Act to clarify existing law that notes held in the Rural Development Insurance Fund can be sold on a nonrecourse basis. The amendment also will add language to subsection (e) providing that the Secretary of Agriculture and any subsequent purchaser of the notes sold on a nonrecourse basis will be relieved of any responsibilities that might have been imposed had the borrower remained indebted to the Secretary.

Section 2001(c) provides that any sale of a note, as described in section 2001(a), would not alter the rights or obligations of the borrower specified in the note, except that the Secretary of Agriculture, prior to sale, must ensure that the notes, as sold, contain no terms relating to graduation of the borrower to other sources of credit. Thus, under sections 2001(b) and 2001(c), on sale of a note under section 2001(a), the Secretary would be relieved of certain obligations, for example, the servicing of the note and the need to consider petitions for deferrals of repayment, but the purchaser of the note would be bound by the interest rate and other specified terms of the note.

Section 2001(d) would establish that each institution of the Farm Credit System will be eligible to purchase notes offered for sale from the Rural Development Insurance Fund and to service (including the extension of additional credit and other actions to preserve, conserve, or protect the institution's interest in the purchased notes), collect, and dispose of the notes, subject to terms and conditions agreed to by the Secretary of Agriculture and the purchasing institution, and approved by the Farm Credit Administration.

Section 2001(e) would prohibit sales of notes, during fiscal years 1987, 1988, and 1989, held in the Agricultural Credit Insurance Fund, except in connection with transactions with the Secretary of the Treasury, without prior approval of Congress. The Agricultural Credit Insurance Fund was established by, and is operated under, section 309 of the Consolidated Farm and Rural Development Act. Section 2001(e) would not restrict current operations of that fund under which the Department of Agriculture replenishes the fund through the sale of notes or ownership interests in loans made under the fund to the Federal Financing Bank.

Subtitle B—Prepayment of Loans

Section 2011. Prepayment of REA guaranteed loans

Section 2011(a) would amend the Rural Electrification Act of 1936 by adding a new section 306A to provide for the prepayment of certain loans made by the Rural Electrification Administration. A substantially similar provision exists in Public Law 99-349 (the fiscal year 1986 urgent supplemental appropriation Act, enacted on July 2, 1986), which section 2011(b) would repeal. Other than as specifically described below, the Committee does not intend to make substantive changes in the comparable provision enacted by Public Law 99-349.

Subsection (a) of new section 306A would allow, except as provided in subsection (c), a borrower of a loan made by the Federal Financing Bank and guaranteed under section 306 of the Rural Electrification Act to prepay the loan by paying only the outstanding principal balance due on the loan (along with accrued interest), if—

(1) the loan is outstanding on July 2, 1986;

(2) private capital, with the existing loan guarantee, is used to replace the loan; and

(3) the borrower certifies that the prepayment will result in substantial savings to its customers or lessen the threat of bankruptcy of the borrower.

Subsection (b) of new section 306A would specify that no sums in addition to the payment of the outstanding principal balance due on the loan can be charged, as the result of the prepayment, against the borrower, the Rural Electrification Revolving Fund, or the Rural Electrification Administration.

Subsection (c) of new section 306A, in paragraph (1), would provide that a borrower will not be qualified to prepay a loan under new section 306A if, in the opinion of the Secretary of the Treasury, to prepay in the borrower's case would adversely affect the operation of the Federal Financing Bank. Paragraph (2) of subsection (c) would suspend, in fiscal year 1987, the authority provided in paragraph (1) for the Secretary of the Treasury to disqualify a borrower from prepayment of a loan until a certain amount of prepayment has been made. Under paragraph (2), the Secretary of the Treasury's authority would be effective only for any loan the prepayment of the principal amount of which will cause the cumulative amount of principal on loans prepaid under new section 306A and Public Law 99-349 to exceed $2,415,000,000.

Subsection (d) of new section 306A would require the Administrator of the Rural Electrification Administration to permit prepayments of principal on loans in fiscal year 1987 under new section 306A and Public Law 99-349 in a cumulative amount not less than the amount that, added to the cumulative amount of principal repayments in fiscal year 1986, equals $2,415,000,000.

Section 2011(a) also will add a new section 306B to the Rural Electrification Act, providing that no direct or insured loan made under the Rural Electrification Act can be sold or prepaid at a value less than the face value of any outstanding principal balance of the loan.

Section 2011(b) would strike out the provisions in Public Law 99-349 that authorize the prepayments of certain Rural Electrification Administration loans.

Section 2011(c) would require the Secretary of Agriculture to issue regulations to implement section 2011 within 15 days after the date of enactment of the bill. To the extent practicable, the Secretary must incorporate the regulations previously issued under Public Law 99-349 to authorize the prepayment of certain Rural Electrification Administration loans.

Subtitle C—Federal Meat Inspection

Section 2021. Short title

Section 2021 provides that subtitle C can be cited as the "Processed Products Inspection Improvement Act of 1986."

Section 2022. Purpose

Section 2022 provides that the amendments made by subtitle C to the Federal Meat Inspection Act ("the Act") are in furtherance of the findings in section 2 of the Act. The findings in section 2 of the Act include statements that meat and meat food products are important sources of the Nation's total supply of food; it is essential in the public interest that consumers be assured wholesome meat and meat food products; articles regulated under the Act are in or affect interstate commerce; and regulation under the Act is appropriate to prevent burdens on interstate commerce and protect consumers.

Section 2023. Amendments to Federal Meat Inspection Act

Section 2023(a) would amend section 6 of the Act to require the Secretary of Agriculture to cause to be made, by inspectors appointed for that purpose, an examination and inspection of meat food products prepared for commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment. Current law requires the Secretary to cause to be made, by inspectors appointed for that purpose, an examination and inspection of *all* meat food products prepared for commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment.

Section 2023(a) would add a new provision to section 6 of the Act to establish that the examination and inspection is to be conducted with the frequency and in the manner as the Secretary deems necessary and provides in rules and regulations, taking into account factors that the Secretary deems appropriate, including the—

(1) nature and frequency of processing operations at the establishment;

(2) adequacy and reliability of processing controls and sanitary procedures at the establishment; and

(3) history of compliance with inspection requirements under the Act, by the operator or anyone responsibly connected with the business (as described in subsection (g) of section 401 of the Act) that operates the establishment. (NOTE.—Section 2023(b) will designate the third sentence of current section 401 as subsection (g) thereof. That sentence provides that a person is

deemed to be responsibly connected with a business if he is a partner, officer, director, holder, or owner of 10 percent or more of its voting stock or employee in a managerial or executive capacity.)

Section 2023(a) would modify section 6 of the Act to provide that all products found by the inspectors, if any, and by the operator of the establishment not to be adulterated must be marked, stamped, tagged, or labeled as "inspected and passed"; and all products found by any inspector or the operator to be adulterated must be marked, stamped, tagged, or labeled as "inspected and condemned". All condemned products must be destroyed for human food purposes. The Secretary can suspend inspection at, and thereby remove inspectors from, any establishment that fails to condemn adulterated meat food products or fails to destroy condemned meat food products. For purposes of any examination and inspection, inspectors must have access to every part of an establishment at all times, by day or night, and without regard to whether the establishment is operated.

Section 2023(b), in paragraphs (1) through (5), would make technical amendments to section 401 of the Act to designate subsections and conform its provisions to the amendments proposed in paragraph (6). The first sentence of section 401 would be designated as subsection (a), the second and third sentences as subsections (f) and (g), and the fourth and fifth sentences as subsection (h). The provisions of the fourth and fifth sentences (finality of determinations and review) would be made to apply to new subsection (e), to be added by paragraph (6).

Section 2023(b), in paragraph (6), would amend section 401 of the Act by adding new subsections (b), (c), (d), and (e).

New subsection (b) of section 401 provides that, on the request of the Secretary at the time of sentencing an individual who is responsibly connected with any business requiring inspection under title I of the Act and who is convicted of a felony involving—

(1) the intentional adulteration of food (except as defined in section 1(m)(8) of the Act;

(2) the adulteration of food, as defined in section 1(m)(8) of the Act, with intent to defraud;

(3) bribery; or

(4) extortion;

the sentencing court must issue a temporary order forbidding the individual to exercise operational control of, or to be physically present at, any establishment requiring inspection under title I, if the court finds that the exercise of operational control by, or the presence of, the individual at the establishment poses a direct and substantial threat to the public health or safety, or if the individual is convicted of a felony for the adulteration of food (as defined in section 1(m)(8) of the Act) with the intent to defraud, poses a clear likelihood of significant economic harm to consumers.

Section 1(m)(8) of the Act currenty provides that the term "adulterated" will apply to any carcass, part thereof, meat or meat food product—

> If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has

> been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

The order must terminate on the earlier of (1) when the Secretary determines by order, after a hearing on the record, whether the individual should exercise operational control of, or be physically present at, any establishment requiring inspection under title I of the Act, and judicial review, if any, of the determination is completed; or (2) ninety days after the issuance of the temporary order by the court if the Secretary does not begin a hearing on the determination within ninety days. As described in the preceding sentence, new subsection (b) will enable the Secretary to issue an order to bar from establishments any person who commits the specified felonies.

New subsection (c) of section 401 provides that any determination and order of the Secretary issued under subsection (a) (existing law) or (b) (described above) will be conclusive and enforceable unless the affected applicant for, or recipient of, inspection service or the affected individual files, not later than 30 days after the effective date of the order a petition for the review of the order in the United States Court of Appeals for the District of Columbia, or in the court of appeals for the circuit where the relevant establishment is doing business. Judicial review of the order must be on the record on which the determination and order are based.

New subsection (d) of section 401 will enable the Secretary to seek court orders against persons and establishments, in addition to taking direct action against establishments under subsection (a) or against persons convicted of certain felonies under subsection (b). It provides in paragraph (1) that, subject to paragraph (3), the Secretary could commence a civil action in an appropriate court, as provided in section 404 of the Act, to withdraw inspection service under title I with respect to any establishment or to prevent any individual responsibly connected with any business requiring inspection under title I from exercising operational control of, or being present at, any establishment requiring inspection under title I. Paragraph (2) establishes the grounds for such actions.

New subsection (d), in paragraph (2), provides that if the court finds, on the basis of clear and convincing evidence, that the recipient of inspection service or the individual has repeatedly failed to comply with the requirements of the Act, or the regulations thereunder, in a manner that poses a direct and substantial threat to the public health or safety, the court must issue an order withdrawing inspection at the establishment, or forbidding the individual to exercise operational control of, or to be physically present at, the establishment, as petitioned for under paragraph (1), for a period that the court deems necessary to carry out the purposes of the Act.

New subsection (d), in paragraph (3), provides that not less than 90 days, and not more than 450 days, before commencing a civil action under paragraph (1), the Secretary must give to each recipient of inspection service, and each individual responsibly connected with the business, with respect to which such action is commenced a written notice that includes a statement that the Secretary intends to commence the action, a comprehensive description of the violations of the Act and the regulations thereunder alleged by the Secretary, and a description of the actions the Secretary considers necessary to be taken by such recipient or the individual to comply with the Act and to eliminate the need to commence the civil action.

New subsection (e) of section 401, in paragraph (1), provides that the Secretary could temporarily withdraw inspection service under title I of the Act with respect to any establishment for a period necessary to ensure the safe and effective performance of official duties under the Act if the Secretary determines, after an opportunity for a hearing on the record, that an officer, employee, or agent of the establishment threatened to forcibly assault, forcibly assaulted, forcibly intimidated, or forcibly interfered with an employee of the United States engaged in, or on account of, the performance of any official duty.

New subsection (e), in paragraph (2), provides that, notwithstanding paragraph (1), the Secretary could temporarily suspend inspection service under title I with respect to any establishment, pending an expedited administrative hearing on the record and judicial review of the order of the Secretary based on the record, if the Secretary determines that temporary suspension of inspection service is necessary for the safety of any employee who performs official duties under the Act. If the Secretary receives, before or after temporarily suspending such inspection service, adequate written assurances from the recipient of inspection service, or the individuals involved, that the conduct or circumstances that threatened the safety of the employee will not continue or recur, the Secretary could continue or restore inspection service on the condition that the assurances are fulfilled.

Section 2023(c) would amend subsection (b) of section 406 of the Act by adding a new provision to specify that, in determining whether the public interest could be adequately served by a written notice of warning (in lieu of criminal prosecution under subsection (a) of section 406), the Secretary must take into account, among other factors—

(1) the compliance history of the establishment;

(2) the magnitude of the violation;

(3) whether compliance with the Act likely would be obtained as a result of the notice; and

(4) whether the violation is of a minor or technical nature.

Currently, subsection (b) states that nothing in the Act can be construed as requiring the Secretary to report for prosecution or for the institution of libel or injunction proceedings, minor violations of the Act whenever the Secretary believes that the public interest will be adequately served by a suitable written notice of warning.

Section 2023(c) also would amend section 406 of the Act by adding a new subsection (c) to provide that, unless the Secretary by regulation provides otherwise, before any violation of the Act is reported by the Secretary for prosecution of a criminal proceeding, the Secretary must give the person alleged to have committed the violation reasonable notice that the Secretary intends to report such violation for prosecution, and an opportunity to present to the Secretary, orally or in writing, views with respect to the proceeding.

Section 2023(d) would make conforming amendments to sections 9 and 21 of the Act.

Section 2023(e) provides that the amendments made by section 2023 will not be construed to authorize the Secretary of Agriculture to refuse to provide inspection under the Act at an establishment solely because the establishment does not participate in a total plant quality-control program.

Section 2024. Reenactment of former provisions of law

Section 2024(a), effective 6 years after the date of enactment of the bill, would amend sections 6, 9, 21, 401, and 406 of the Act to read, respectively, as the sections read immediately before the date of enactment of the bill. The effect of section 2024(a) would be to "sunset" the amendments to the Act to be made by the bill in six years.

Section 2024(b) contains a savings provision that states that the sunset provisions of section 2024(a) will not have the effect of releasing any penalty, forfeiture, or liability incurred under the Act, as amended under section 2023, or regulations issued thereunder.

Section 2025. Sense of Congress

Section 2025 provides that it is the sense of Congress that the Secretary of Agriculture should carry out a program to detect residues in livestock that are subject to inspection under title I of the Act, and evaluate the feasibility of, and develop, a program that would enable the Secretary to trace any particular livestock that are subject to inspection under title I, to identify the producer of the livestock.

Section 2026. Annual report

Section 2026 provides that, not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary of Agriculture must submit to the House and Senate agriculture committees a report describing any action proposed or taken by the Secretary—

(1) to implement the amendments made by subtitle C;

(2) to carry out a program to detect residues in livestock that are subject to inspection under title I of the Act;

(3) to evaluate the feasibility of, and develop, a program that would enable the Secretary to trace any particular livestock that are subject to inspection under title I, to identify the producer of the livestock; and

(4) regarding personnel, as a result of the amendments made by subtitle C, plus any effort made by the Secretary to minimize any adverse economic effect of the amendments on employees of the Department of Agriculture.

Section 2027. Congressional reevaluation

Section 2027 will require Congress, not later than six years after the date of enactment of the bill, to evaluate the operation and effects of the amendments to the Act made by subtitle C, for the purpose of determining whether to extend or modify the operation of the amendments, and enact legislation necessary to efficiently and effectively carry out the Act.

Section 2028. Effective dates; application of amendments

Section 2028(a) states that, except as provided in section 2024(a) and 2028(b), the amendments to the Act made by subtitle C will take effect on the date of enactment of the bill.

Section 2028(b) provides that sections 6, 9, and 21 of the Act, as in effect immediately before the date of enactment of the bill, will apply with respect to establishments until the Secretary first issues regulations as provided in the amendment made by section 2023(a).

COMMITTEE CONSIDERATION

Hearings

On April 29, 1986, the Subcommittee on Livestock, Dairy, and Poultry held a public hearing on H.R. 4683, which was modified and adopted as subtitle C of title II. A representative of the Food Safety and Inspection Service of the U.S. Department of Agriculture testified that the Administration supports a move toward discretionary meat inspection at the processing stage; however, they would want the bill to be amended to give the Department added enforcement authority. The Office of the Inspector General of the Department of Agriculture presented testimony in support of the concept of less-than-continuous inspection at the processing stage. The Office of Inspector General's witness said that the Administration needs more flexibility in assigning inspection personnel to maintain public health standards and comply with deficit reduction legislation.

Twelve other witnesses testified on the bill. Representatives of the meat processing industry expressed support for the essential elements in the legislation and emphasized the need for greater flexibility in inspection at the processing stage. Representatives of several consumer groups voiced some concerns regarding residue testing and the maintenance of public health. A representative of the American Federation of Government Employees also expressed concerns about the bill and the maintenance of public health. Two scientists testified in support of the bill, arguing that recent developments in technology require modernization and flexibility in inspection. These two witnesses asserted that the proposed amendments to the Meat Inspection Act would allow the Department to be more efficient in protecting the consuming public by using inspection resources where they are most needed.

After a discussion, the members of the Subcommittee expressed a consensus that the various interested parties should work together to address the concerns raised at the hearing about the bill and asked the interested parties to do so.

SUBCOMMITTEE MARKUP

On Thursday, July 17, 1986, the Ad Hoc Reconciliation Task Force, as appointed by the Chairman de la Garza, met to consider options to meet the required budget reconciliation targets set in the First Concurrent Resolution on the Budget Fiscal Year 1987. Members of the Task Force were Chairman de la Garza, Mr. Jones of Tennessee, Mr. Panetta, Mr. Stenholm, Mr. Hatcher, Mr. Olin, Mr. Stallings, Mr. Jeffords, Mr. Coleman, Mr. Marlenee, Mr. Roberts, and Mr. Emerson. After a discussion of several different options, the Task Force agreed to recommend that the Committee approve the sale of Rural Development Insurance Fund loan assets, prepayments of certain Rural Electrification Administration guaranteed loans, and certain amendments to the Federal Meat Inspection Act.

COMMITTEE MARKUP

The Committee met on Wednesday, July 23, 1986, to consider the options prepared by the Ad Hoc Reconciliation Task Force to meet the required budget reconciliation targets set in the First Concurrent Resolution on the Budget. Chairman de la Garza called the meeting to order and presented the recommendations of the Ad Hoc Task Force. Mr. Howard Conley, staff economist, was recognized to explain the budget implications of each option. Mr. Conley explained that the Task Force had recommended the sale of loan assets held in the Rural Development Insurance Fund, the authorization of prepayments for certain guaranteed Rural Electrification Administration loans, and certain amendments to the Federal Meat Inspection Act to lower program costs.

Mr. Daschle offered an amendment to the Rural Development Insurance Fund sale of assets proposed to clarify that any such sale must not alter the rights or obligations of the borrower specified in the note, except that the Secretary, prior to sale, must ensure that the notes contain no terms related to graduation of the borrower to other sources of credit. Mr. Daschle explained that the amendment was needed to make sure that purchasers of notes would not be able to change the rate of interest set in the note, or make other material modifications to the note. After a discussion, the Committee agreed to the Daschle amendment by voice vote.

Mr. Daschle offered a second amendment to the Rural Development Insurance Fund sale of assets proposal to prohibit, for fiscal years 1987, 1988, and 1989, the sale to the public of any loan from the Agricultural Credit Insurance Fund without prior legislative approval from Congress. After a discussion, the Committee agreed to the Daschle amendement.

Mr. Stenholm was recognized to explain the provisions in the proposal that would amend the Meat Inspection Act. Mr. Stenholm explained that the amendments to the Act would authorize less-than-continuous inspections for processed meat products. Mr. Stenholm said that the proposal would reduce program costs and eliminate redundant inspections by granting the Secretary the discretion to determine the intensity and frequency of the physical inspection of the processing of meat and meat food products and to use innovative techniques to assure the public that the meat it consumes is both wholesome and safe.

Mr. Stenholm also presented proposals setting forth the Committee's position on the proposed amendments. Mr. Thomas asked that the Committee also consider a proposal for the Committee's position on the poultry inspection laws. After further discussion, the Committee agreed, without objection, to the proposals presented by Mr. Stenholm and Mr. Thomas. Those statements of the Committee's position are contained in the Purpose and Need section of this report on title II of the bill.

The Committee then agreed to the reconciliation proposals of the Task Force, as amended, by voice vote, in the presence of a quorum. Those proposals are contained in title II of the bill.

ADMINISTRATION POSITION

At the time of the filing of this report, the Committee had not received a report from the U.S. Department of Agriculture concerning title II. The views of the Administration are reflected in the Committee Consideration section of this report.

BUDGET ACT COMPLIANCE (SECTION 308 AND SECTION 403)

The provisions of clause 2(l)(3)(B) of Rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority or new or increased tax expenditures) are not considered applicable. The estimate and comparison required to be prepared by the Director of the Congressional Budget Office under clause 2(l)(3)(C) of Rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974 submitted to the Committee prior to the filing of this report are as follows:

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 29, 1986.

Hon. E de la Garza,
Chairman, Committee on Agriculture,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for a Committee print entitled "Title I of the Omnibus Budget Reconciliation Bill", with technical adjustments provided by the committee staff.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Rudolph G. Penner.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Not yet assigned.
2. Bill title: Omnibus Reconciliation Bill—Title I: Agriculture.
3. Bill status: Committee proposal for inclusion in the fiscal year 1987 reconciliation bill, as adopted by the House Committee on Ag-

riculture, July 23, 1986, with technical adjustments provided by the committee staff.

4. Bill purpose: The legislation requires the Administrator of the Rural Electrification Administration (REA) to approve a minimum of $2,415 million in loan prepayments, without prepayment premiums. It also requires the sale of Rural Development Insurance Fund (RDIF) loans in fiscal years 1988 and 1989 in amounts necessary to generate net proceeds of $552 million and $547 million, respectively. Finally, the proposal would amend the Federal Meat Inspection Act to give the Secretary of Agriculture greater discretion in the manner and frequency of inspection of meat processing facilities.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1987	1988	1989	1990	1991
Direct spending:					
REA amendments—function 270:					
Estimated budget authority					
Estimated outlays	−555	3	4	5	6
REA amendments—function 900:					
Estimated budget authority	42	60	59	58	57
Estimated outlays	42	60	59	58	57
Sale of RDIF loans:					
Estimated borrowing authority		−118	−122	180	180
Estimated outlays		−552	−547	180	180
Total: Direct spending:					
Estimated budget/borrowing authority	42	−58	−63	238	237
Estimated outlays	−513	−489	−484	243	243
Authorizations:					
Amendments to Federal Meat Inspection Act:					
Estimated authorization level	−1	−3	−5	−7	−9
Estimated outlays	−1	−3	−5	−7	−9

The costs of this bill fall within budget functions 270, 350, 450, and 900.

Basis of estimate:

REA loan prepayment

The Committee's proposal sets new criteria for the prepayment of rural electrification loans held by the Federal Financing Bank (FFB). These criteria would supersede those established in P.L. 99-349, the fiscal year 1986 Emergency Supplemental Appropriations Bill. CBO estimates that the new criteria would result in the prepayment of $2,115 million in FFB loans in fiscal year 1987, in addition to $300 million in 1986 resulting from current law. Under current law, CBO estimates that $1,558 million of prepayments will be made in 1987. The $557 million of additional prepayments would be partially offset by forgone principal and interest payments of about $44 million. Beginning in fiscal year 1988, outlays in each of the next 25 to 35 years would increase relative to current law by about $63 million.

RDIF loan sales

The proposal requires the sale of RDIF loans in amounts sufficient to generate net proceeds of $552 million and $547 million in fiscal years 1988 and 1989, respectively. CBO estimates that the face value of loans sold would total about $1,010 million in fiscal year 1988 and $1,150 million in fiscal year 1989. Forgone interest and principal payments are estimated to be $84 million in fiscal year 1988 and $180 million annually in fiscal years 1989 through 2007. This estimate is based on the assumption that these loans will be sold without recourse to the federal government.

There is some speculation that the interest from these loans would be exempt from federal taxation. No bond counsel opinion exists stating that these loans would be tax-exempt, but should this be the case, then loans of lower face value would need to be sold each year to meet the net proceeds targets. This would result in reduced federal tax revenues, but would also reduce the loss from forgone principal and interest payments.

Federal Meat Inspection Act amendments

The United States Department of Agriculture (USDA) expects that this legislation would allow them to reduce the number of inspections conducted by the Food Safety and Inspection Service (FSIS) in some meat processing facilities, thereby reducing the number of inspectors required. Within seven years of enactment, USDA expects the number of meat inspectors to be reduced by fifty percent. Since the committee report stresses the desire to avoid displacement of inspection personnel, cuts in the number of positions are estimated to occur gradually. USDA expects that about half of those displaced could be retrained to fill other FSIS positions of equivalent pay grades; these retraining costs would reduce savings from this proposal. Savings are further reduced by the Committee's stated intent that a significant portion of savings be reinvested in USDA's National Residue Program. Savings would depend on subsequent appropriations action.

6. Financing mechanism: The additional rural electrification loans that woud be prepaid as a result of the Committee's proposal would not be subject to prepayment penalties. Under current law, these penalties would be equal to the present value of the expected future interest payments from the prepaid loans. CBO estimates that the penalties forgone under this proposal total $175 million.

7. Estimated cost to State and local governments: None.

8. Estimate comparison: None.

9. Previous CBO estimate: On July 28, 1986 CBO prepared an estimate to Title I of the Omnibus Budget Reconciliation Bill. This estimate reflects technical adjustments by the committee staff to Title I.

10. Estimate prepared by: Carmela Dyer, Paul DiNardo and Peter Fontaine.

11. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of Rule XI of the Rules of the House of Representatives, the Committee estimates that enactment of title II will have no inflationary impact on the national economy.

OVERSIGHT STATEMENT

No summary of oversight findings and recommendations made by the Committee on Government Operations under clause 2(b)(2) of Rule X of Rules of the House of Representatives was available to the Committee with reference to the subject matter specifically addressed by title II.

No specific oversight activities other than the hearings detailed in this report were conducted by the Committee within the definition of clause 2(b)(1) of Rule X of the Rules of the House of Representatives.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by title II are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT

* * * * * * *

SEC. 309A. (a) There is hereby created the Rural Development Insurance Fund (hereinafter in this section referred to as the "Insurance Fund") which shall be used by the Secretary as a revolving fund for the discharge of the obligations of the Secretary under contracts guaranteeing or insuring rural development loans. For the purpose of this section "rural development loans" shall be those provided for by sections 304(b), 306(a)(1), 306(a)(14), 310B, and 312(b), except loans (other than for water systems and waste disposal facilities) of a type authorized by section 306(a)(1) prior to its amendment by the Rural Development Act of 1972.

(b) The assets and liabilities of the Agricultural Credit Insurance Fund referred to in section 309(a) applicable to loans for water systems and waste disposal facilities under section 306(a)(1) are hereby transferred to the Insurance Fund. Such assets (including the proceeds thereof) and liabilities and rural development loans guaranteed or insured pursuant to this title shall be subject to the provisions of this section and section 308.

(c) Moneys in the Insurance Fund not needed for current operations shall be deposited in the Treasury of the United States to the credit of the Insurance Fund or invested in direct obligations of the United States or obligations guaranteed by the United States. The Secretary may purchase with money in the Insurance Fund any notes issued by the Secretary to the Secretary of the Treasury for the purpose of obtaining money for the Insurance Fund.

(d) The Secretary is authorized to make and issue notes to the Secretary of the Treasury for the purpose of obtaining funds necessary for discharging obligations under this section and for making loans, advances, and authorized expenditures out of the Insurance Fund. Such notes shall be in such form and denominations and have such maturities and be subject to such terms and conditions as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Such notes shall bear interest at a rate fixed by the Secretary of the Treasury, taking into consideration the current average market yield of outstanding marketplace obligations of the United States having maturities comparable to the average maturities of rural development loans made, guaranteed, or insured under this title. The Secretary of the Treasury is authorized and directed to purchase any notes of the Secretary issued hereunder, and, for that purpose, the Secretary of the Treasury is authorized to use as a public debt transactions the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which such securities may be issued under such Act, as amended, are extended to include the purchase of notes issued by the Secretary hereunder. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes shall be treated as public debt transactions of the United States.

(e) Notes and security acquired by the Secretary in connection with rural development loans be made, guaranteed, or insured under this title or transferred by subsection (b) of this section shall become a part of the Insurance Fund. Notes may be held in the Insurance Fund and collected in accordance with their terms or may be sold by the Secretary with or without agreements for insurance thereof at the balance due thereon, or on such other basis as the Secretary may determine from time to time**[.]**, *including sale on a nonrecourse basis. The Secretary and any subsequent purchaser of such notes sold by the Secretary on a nonrecourse basis shall be relieved of any responsiblities that might have been imposed had the borrower remained indebted to the Secretary.* All net proceeds from such collections, including sales of notes or property, shall be deposited in and become a part of the Insurance Fund.

(f) The Secretary shall deposit in the Insurance Fund any charges collected for loan services provided by the Secretay as well as charges assessed for losses and costs of administration in connection with making, guaranteeing, or insuring rural developing loans under this title.

(g) The Secretary may utilize the Insurance Fund—

(1) to make rural development loans which could be insured under this title whenever he has a reasonable assurance that they can be sold without undue delay, and he may sell and insure such loans;

(2) to pay amounts to which the holder of insured notes is entitled on loans heretofore or hereafter insured acquiring between the date of any payments by the borrower and the date of transmittal of any such payments to the holder. In the discretion of the Secretary, payments other than final payments need not be remitted to the holder until due or until the next agreed annual or semiannual remittance date;

(3) to pay to the holder of insured notes any deferred or defaulted installment, or upon assignment of the note to the Sec-

retary at the Secretary's request the entire balance due on the loan;

(4) to purchase notes in accordance with contracts of insurance heretofore entered into by the Secretary;

(5) to make payments in compliance with the Secretary's obligations under contracts of guarantee entered into by him;

(6) to pay taxes, insurance, prior liens, expenses necessary to make fiscal adjustments in connection with the application and transmittal of collections or necessary to obtain credit reports on applicants or borrowers, expenses for necesssary services, including construction inspections, commercial appraisals, loan servicing, consulting business advisory or other commercial and technical services, and other program services, and other expenses and advances authorized in section 335(a) of this title in connection with insured loans. Such items may be paid in connection with guaranteed loans after or in connection with acquisition by the Secretary of such loans or security therefor after default, to an extent deterimined by the Secretary to be necessary to protect the interest of the Government, or in connection with grants and any other activity authorized in this title;

(7) to pay the difference between interest payments by borrowers and interest to which holders of insured notes are entitled under contracts of insurance heretofore or hereafter entered into by the Secretary; and

(8) to pay the Secretary's costs of administration necessary to insure loans under the programs referred to in subsection (a) of this section, make grants under sections 306(a) and 310B of this title, service, and otherwise carry out such programs, including costs of the Secretary incidental to guaranteeing rural development loans under this title, either directly from the Insurance Fund or by transfers from the Fund to, and merger with, any appropriations for administrative expenses.

(h) When any loan is sold out of the Insurance Fund as an insured loan, the interest or other income thereon paid to an insured holder shall be included in gross income for purposes of chapter 1 of the Internal Revenue Code of 1954.

RURAL ELECTRIFICATION ACT OF 1936

* * * * * * *

SEC. 306. GUARANTEED LOANS; ACCOMMODATION AND SUBORDINATION OF LIENS.—The Administrator may provide financial assistance to borrowers for purposes provided in the Rural Electrification Act of 1936, as amended, by guaranteeing loans, in the full amount thereof, made by the Rural Telephone Bank, National Rural Utilities Cooperative Finance Corporation, and any other legally organized lending agency, or by accommodating or subordinating liens or mortgages in the fund held by the Administrator as owner or as trustee or custodian for purchase of notes from the fund, or by any combination of such guarantee, accommodation, or subordination. No fees or charges shall be assessed for any such guarantee, accommodation, or subordination. With respect to guarantee issued by the Administrator under this section, on the request of the borrower of any such loan so guaranteed, the loan shall be made by the Federal Financing Bank and at a rate of interest that is not more than the rate of interest applicable to other similar loans then being made or purchased by the Bank. Guaranteed loans shall bear interest at the rate agreed upon by the borrower and the lender. Guaranteed loans, and accommodations and subordination of liens or mortgages, may be made concurrently with *an insured loan.* The amount of guaranteed loans shll be subject only to such limitations as to the amounts as may be authorized from time to time by the Congress of the United States: *Provided,* That any amounts guaranteed hereunder shall not be included in the totals of the budget of the United States Govenment and shall be exempt from any general limitation imposed by statute on expenditures and net lending (budget outlays) of the United States. As used in this title, a guaranteed loan is one which is initially made, held, and serviced by a legally organized lending agency and which is guaranteed by the Administrator hereunder. A guaranteed loan including the related guarantee, may be assigned to the extent provided in the contract of guarantee executed by the Administrator under this title; the assignability of such loan and guarantee shall be governed exclusively by said contract of guarantee.

SEC. 306A. PREPAYMENT OF LOANS.

(a) Except as provided in subsection (c), a borrower of a loan made by the Federal Financing Bank and guaranteed under section 306 of this Act may prepay such loan by paying the outstanding principal balance due on the loan, if—

(1) the loan is outstanding on July 2, 1986;

(2) private capital, with the existing loan guarnatee, is used to replace the loan; and

(3) the borrower certifies that such prepayment will result in substantial savings to its customers or lessen the threat of bankruptcy of the borrower.

(b) No sums in addition to the payment of the outstanding principal balance due on the loan shall be charged as the result of such prepayment against the borrower, the fund, or the Rural Electrification Administration.

(c)(1) A borrower will not be qualifeid for prepayment under this section if, in the opinion of the Secretary of the Treasury, to prepay in such borrower's case would adversely affect the operation of the Federal Financing Bank.

(2) Paragraph (1) shall be effective in fiscal year 1987 only for any loan the prepayment of the principal amount of which will cause the cumulative amount of principal on loans prepaid under this section (and under the undesignated paragraph relating to the prepayment of loans by the Rural Electification and Telephone System, of chapter I of the Act entitled "An Act making urgent supplemental appropriations for the fiscal year ending September 30, 1986, and for other purposes" (Public Law 99–349), approved July 2, 1986) to exceed $2,461,000,000.

(d) The Administrator shall permit, subject to subsection (a), prepayments of principal on loans in fiscal year 1987 under this section

(or under the undesignated paragraph relating to the prepayment of loans by the Rural Electrification and Telephone Systems, of chapter I of the Act entitled "An Act making urgent supplemental appropriations for the fiscal year ending September 30, 1986, and for other purposes" (Public Law 99–349), approved July 2, 1986) in a cumulative amount not less than the amount that, added to the cumulative amount of principal repayments in fiscal year 1986, equals $2,461,000,000.

SEC. 306B. SALE OR PREPAYMENT OF DIRECT OR INSURED LOANS.

A direct or insured loan made under this Act shall not be sold or prepaid at a value less than the face value of any outstanding principal balance of such loan.

* * * * * * *

ACT OF JULY 2, 1986

AN ACT Making urgent supplemental appropriations for the fiscal year ending September 30, 1986, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

CHAPTER I

* * * * * * *

PREPAYMENT OF LOANS BY RURAL ELECTRIFICATION AND TELEPHONE SYSTEMS

[In the case of a borrower of a loan made by the Federal Financing Bank, and guaranteed by the Administrator of the Rural Electrification Administration, under section 306 of the Rural Electrification Act of 1936 (7 U.S.C. 936) that is outstanding on the date of enactment of this Act, the borrower may prepay the loan by payment of the outstanding principal balance due on the loan using private capital with the existing loan guarantee. No sums in addition to payment of such balance shall be charged as the result of such prepayment against the borrower, the Rural Electrification and Telephone Revolving Fund established under section 301 of such Act (7 U.S.C. 931), or the Rural Electrification Administration. To qualify for prepayment, a borrower shall certify that such prepayment will result in substantial savings to its customers or lessen the threat of bankruptcy of the borrower unless in such individual case, in the opinion of the Secretary of the Treasury, to repay would adversely affect the operation of the Federal Financing Bank: *Provided,* That any regulations under this provision shall be issued and become effective within 30 days of enactment of this Act.]

* * * * * * *

FEDERAL MEAT INSPECTION ACT

(NOTE.—The amendments to the Federal Meat Inspection Act shown below, to be made by title II, will be effective during the period ending six years after enactment of the bill. See section 1024 of the bill. The amendments to sections 6, 9, and 21 of the Act will become effective with respect to meat processing establishments at the time that the Secretary of Agriculture issues regulations to carry out section 6, as amended by title II. See section 1028(b) of the bill. The amendments to sections 401 and 406 of the Act will become effective on enactment.)

* * * * * * *

SEC. 6. [For the purposes hereinbefore set forth the Secretary shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all meat food products prepared for commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, and for the purposes of any examination and inspection and inspectors shall have access at all times, by day or night, whether the establishment be operated or not, to every part of said establishment; and said inspectors shall mark, stamp, tag, or label as "Inspected and passed" all such products found to be not adulterated; and said inspectors shall label, mark, stamp, or tag as "Inspected and condemned" all such products found adulterated, and all such condemned meat food products shall be destroyed for food purposes, as hereinbefore provided, and the Secretary may remove inspectors from any establishment which fails to so destroy such condemned meat food products: *Provided,* That] *For the purposes hereinbefore set forth, the Secretary shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of meat food products prepared for commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment. Such examination and inspection shall be conducted with such frequency and in such manner as the Secretary deems necessary, as provided in rules and regulations issued by the Secretary, taking into account such factors as the Secretary deems to be appropriate, including—*

(1) the nature and frequency of the processing operations at such establishment;

(2) the adequacy and reliability of the processing controls and sanitary procedures at such establishment; and

(3) the history of compliance with inspection requirements in effect under this Act, by the operator of such establishment or anyone responsibly connected with the business (as described in section 401(g) of this Act) that operates such establishment.

All such products found by such inspectors, if any, and by the operator of such establishment to be not adulterated shall be marked, stamped, tagged, or labeled as "Inspected and passed"; and all such products found by any of such inspectors or by the operator of such establishment to be adulterated shall be marked, stamped, tagged, or labeled as "Inspected and condemned". All such condemned products shall be destroyed for human food purposes. The Secretary may suspend inspection at, and thereby remove inspectors from, any establishment that fails to so condemn adulterated meat food *products or fails to so destroy condemned meat food products. For purposes of any examination and inspection, such inspectors shall have access to every part of an establishment at all times, by day or night, and without regard to whether such establishment is operated. Notwithstanding the preceding provisions of this section,* subject to the rules and regulations of the Secretary the provisions of this section in regard to preservatives shall not apply to meat food products for export to any foreign country and which are prepared or packed according to the specifications or directions of the foreign purchaser, when no substance is used in the preparation or packing thereof in conflict with the laws of the foreign country to which said article is to be exported; but if said article shall be in fact sold or offered for sale for domestic use or consumption then this proviso shall not exempt said article from the operation of all the other provisions of this chapter.

* * * * * * *

SEC. 9. The Secretary shall cause an examination and inspection of all cattle, sheep, swine, goats, horses, mules and other equines, and, *except as provided in section 6,* the food products thereof, slaughtered and prepared in the establishments hereinbefore described for the purposes of commerce to be made during the nighttime as well as during the daytime when the slaughtering of said cattle, sheep, swine, goats, horses, mules, and other equines, or the preparation of said food products is conducted during the nighttime.

* * * * * * *

SEC. 21. The Secretary shall appoint from time to time inspectors to make examination and inspection of all cattle, sheep, swine, goats, horses, mules, and other equines, inspection of which is hereby provided for and of all carasses and parts thereof, and of all meats [and meat food products] *thereof, and of meat food products* thereof, and of the sanitary conditions of all establishments in which such meat and meat food products hereinbefore described are prepared; and said inspectors shall refuse to stamp, mark, tag, or label any carcass or any part thereof, or meat food product therefrom, prepared in any establishment hereinbefore mentioned, until the same shall have actually been inspected and found to be not adulterated; and shall perform such other duties as are provided by this chapter and by the rules and regulations to be prescribed by said Secretary; and said Secretary shall, from time to time, make such rules and regulations as are necessary for the efficient execution of the provisions of this chapter, and all inspections and examinations made under this chapter, shall be such and made in such manner as described in the rules and regulations prescribed by said Secretary not inconsistent with provisions of this chapter.

* * * * * * *

TITLE IV—AUXILIARY PROVISIONS

SEC. 401. (*a*) The Secretary may (for such period, or indefinitely, as he deems necessary to effectuate the purposes of this chapter) refuse to provide, or withdraw, inspection service under subchapter I of this chapter with respect to any establishment if he determines, after opportunity for a hearing is accorded to the applicant for, or recipient of, such service, that such applicant or recipient is unfit to engage in any business requiring inspection under subchapter I because the applicant or recipient, or anyone responsibly connected with the applicant or recipient, has been convicted, in any Federal or State court, of (1) **[**any felony, or (2)**]** more than one violation of any law, other than a felony, based upon the acquiring, handling, or distributing of unwholesome, mislabeled, or deceptively packaged food or upon fraud in connection with transactions in food *or (2) any felony.*

(b)(1) On the request of the Secretary at the time of the sentecing of an individual who is a person responsibly connected with any business requiring inspection under title I of this Act and who is convicted of a felony involving—

(A) the international adulteration of food (except as defined in section 1(m)(8) of this Act);

(B) the adulteration of food, as defined in section 1(m)(8) of this act, with intent to defraud;

(C) bribery; or

(D) extortion;

the sentencing court shall issue a temporary order forbidding such individual to exercise operational control of, or to be physically present at, any establishment requiring inspection under title I of this Act if the court finds that the exercise of operational control by, or the presence of, such individual at the establishment either poses a direct and substantial threat to the public health or safety or, if such individual is convicted of a felony described in subparagraph (B), poses a clear likelihood of significant economic harm to consumers.

(2) Such order shall terminate—

(A) whenever the Secretary determines by order, after a hearing on the record, whether such individual should exercise operational control of, or be physically present at, any establishment requiring inspection under title I of this Act, and judicial review, if any, of such determination is completed; or

(B) ninety days after the issuance of such temporary order by the court if the Secretary does not commence such hearing before the expiration of such ninety days;

whichever occurs earlier

(c) Any determination and order of the Secretary issued under subsection (a) or (b) shall be conclusive and enforceable unless the affected applicant for, or recipient of, inspection service or the affected individual files, not later than thirty days after the effective date of such order, a petition for review of such order in the United States Court of Appeals for the District of Columbia Circuit or the court of appeals for the circuit in which the relevant establishment is doing business. Judicial review of such order shall be upon the record upon which the determination and order are based.

(d)(1) Subject to paragraph (3), the Secretary may commence a civil action in an appropriate court, as provided in section 404, to withdraw inspection service under title I of this Act with respect to any establishment or to prevent any individual responsibly connect-

ed with any business requiring inspection under title I of this Act from exercising operational control of, or being present at, any establishment requiring inspection under title I of this Act.

(2) If the court finds, on the basis of clear and convincing evidence, that the recipient of inspection service or such individual has repeatedly failed to comply with the requirements of this Act, or the rules and regulations issued under this Act, in a manner that poses a direct and substantial threat to the public health or safety, then the court shall issue an order—

(A) withdrawing inspection at such establishment; or

(B) forbidding such individual to exercise operational control of, or to be physically present at, such establishment;

for such period as the court deems necessary to carry out the purposes of this Act.

(3) Not less than ninety days, and not more than 450 days, before commencing a civil action under paragraph (1), the Secretary shall give to each recipient of inspection service, and each individual responsibly connected with the business, with respect to which such action is commenced a written notice that includes—

(A) a statement that the Secretary intends to commence such action;

(B) a comprehensive description of the violations of this Act and the regulations issued under this Act alleged by the Secretary; and

(C) a description of the actions the Secretary considers necessary to be taken by such recipient or such individual to comply with this Act and to eliminate the need to commence such civil action.

(e)(1) The Secretary may temporarily withdraw inspection service under title I of this Act with respect to any establishment for such period as is necessary to ensure the safe and effective performance of official duties under this Act if the Secretary determines, after an opportunity for a hearing on the record, that an officer, employee, or agent of such establishment—

(A) threatened to forcibly assault;

(B) forcibly assaulted;

(C) forcibly intimidated; or

(D) forcibly interfered with;

an employee of the United States engaged in, or an account of, the performance of any of such official duties.

(2)(A) Notwithstanding paragraph (1), the Secretary may temporarily suspend inspection service under title I of this Act with respect to any establishment, pending an expedited administrative hearing on the record and judicial review of the order of the Secretary based on such record, if the Secretary determines that temporary suspension of such inspection service is necessary for the safety of any employee who performs official duties under this Act.

(B) If the Secretary receives, before or after temporarily suspending such inspection service in accordance with subparagraph (A), adequate written assurances from the recipient of inspection service, or the individuals involved, that the conduct or circumstances that threatened the safety of such employee will not continue or recur, the Secretary may continue or restore such inspection service on the condition that such assurances are fulfilled.

(f) This section shall not affect in any way other provisions of this chapter for withdrawal of inspection services under subchapter I from establishments failing to maintain sanitary conditions or to destroy condemned carcasses, parts, meat or meat food products.

(g) For the purposes of this section a person shall be deemed to be responsibly connected with the business if he was a partner, officer, director, holder, or owner of 10 per centum or more of its voting stock or an employee in a managerial or executive capacity.

(h) Except as provided in subsection (e)(2), the **[**The**]** determination and order of the Secretary with respect thereto under **[**this section**]** *subsection (e)* shall be final and conclusive unless the affected applicant for, or recipient of, inspection service files application for judicial review within thirty days after the effective date of such order in the appropriate court as provided in section 674 of this title. Judicial review of any such order shall be upon the record upon which the determination and order are based.

* * * * * * *

Sec. 406. (a) Any person, firm, or corporation who violates any provision of this chapter for which no other criminal penalty is provided by this chapter shall upon conviction be subject to imprisonment for not more than one year, or a fine of not more than $1,000, or both such imprisonment and fine; but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated (except as defined in section 601(m)(8) of this title), such person, firm, or corporation shall be subject to imprisonment for not more than three years or a fine of not more than $10,000, or both: *Provided,* That no person, firm, or corporation, shall be subject to penalties under this section for receiving for transportation any article or animal in violation of this chapter if such receipt was made in good faith, unless such person, firm, or corporation refuses to furnish on request of a representative of the Secretary the name and address of the person from whom he received such article or animal, and copies of all documents, if any there be, pertaining to the delivery of the article or animal to him.

(b) Nothing in this chapter shall be construed as requiring the Secretary to report for prosecution or for the institution of libel or injunction proceedings, minor violations of this chapter whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

In determining whether the public interest could be adequately served by a written notice of warning, the Secretary shall take into account, among other factors—

(1) the compliance history of such establishment;

(2) the magnitude of the violation;

(3) whether compliance with this Act would likely be obtained as a result of such notice; and

(4) whether such violation is of a minor or technical nature.", *and*

(2) by adding at the end thereof the following new subsection:

(c) Unless the Secretary by regulation provides otherwise, before any violation of this Act is reported by the Secretary for prosecution

of a criminal proceeding, the Secretary shall give the person alleged to have committed such violation—

(1) reasonable notice that the Secretary intends to report such violation for prosecution; and

(2) an opportunity to present to the Secretary, orally or in writing, views with respect to such proceeding

* * * * * * *

TITLE III—COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

House of Representatives,
Committee on Banking, Finance and Urban Affairs,
Washington, DC, July 25, 1986.

Hon. William H. Gray III,
Chairman, Committee on the Budget,
House of Representatives, Washington, DC.

Dear Mr. Chairman: Enclosed is a copy of the legislative language, and the accompanying report language, proposed by the Banking Committee to satisfy the reconciliation requirements contained in the conference report on the Concurrent Resolution on the Budget for Fiscal Year 1987.

Mr. Wylie, our ranking minority member, has informed me that the minority supports this legislation.

Sincerely,

Fernand J. St Germain, *Chairman.*

Enclosure.

Report Language To Accompany the Reconciliation Recommendations From the House Committee on Banking, Finance and Urban Affairs for Fiscal Year 1987

Under the reconciliation instructions of the Budget Resolution, the Committee on Banking, Finance and Urban Affairs is required to provide legislation to insure that loan assets for certain programs within its jurisdiction be sold to the public in order to increase federal revenues. Technically, its perogatives under this requirement could include alternatives such as drastically reducing low income assisted housing levels for rural and urban families, the elderly and the homeless. However, the fact of the matter is that the Committee must make a choice between two objectionable alternatives to satisfy a requirement forced upon it by a questionable budget procedure. In reality, the Banking Committee has no choice. In order to achieve the magnitude of the required outlay reductions, it would have to zero out low income housing programs because the outlays associated with the levels that are authorized will not occur in the fiscal years in which the current deficit reduction action is aimed. Therefore, however reluctantly, the Committee sets forth the provisions necessary to sell a portion of the assets of the nation at the risk of realizing unnecessary losses of the asset itself, its associated future revenues and the discounts that will be required in order to sell it—all for a one-time boost in revenues. This has been characterized as a "fire-sale" approach to fiscal management. The deficit reduction process—its necessity, momentum and timing—leaves the Committee no opportunity for rationally exploring alternatives to the outright sale of these valuable assets at great losses to the Treausry over the long term. The method of so-called scorekeeping that forces sales of good loan assets only to non-government entities is the worst feature of this process. The Committee urges the Budget Committee to reconsider the treatment of participation certificates, certificates of beneficial ownership and other securities backed by these loans as borrowing instead of asset sales. If treated as a sale of assets instead of borrowing, revenues could be obtained without selling the loans. The current scorekeeping deprives the Committee of its proper perogatives and leads to the costly and unnecessary sale of good assets of the federal government. The Committee pledges to work with the Budget Committee and other Committees of the Congress to develop a more rational method of determining budget savings prior to the fiscal year 1988 Budget process.

The Committee has reluctantly acted to require the sale of rural housing loans to the public in an amount that shall be sufficient to provide $1,158,000,000 and Export-Import Bank loans sufficient to provide $500,000,000 in net receipts to offset federal outlays in fiscal year 1987, $523,000,000 and $546,000,000 in rural housing loans, respectively, in fiscal years 1988 and 1989. The Committee is concerned that these sales take place in the most cost-efficient and expeditous manner. Therefore, it directs the agencies involved to consult with the Federal Financing Bank in setting the guidelines and conditions of the loan sales and in selling the loans if it is mutually determined that it is better suited to do so. Its purpose is to limit discounts, excessive fees and similar costs that will reduce the net receipts for these sales or require larger amounts to be sold than might otherwise be necessary to obtain the amounts required. While the amount of loans necesssary to sell in order to achieve the stated outlay reduction will be only a small portion of the entire rural housing portfolio and a substantial portion of the Export-Import bank loan portfolio, it is assumed that these portions will contain the better loans in both portfolios. Also, the Secretary of Agriculture is directed to sell from the Farmers Home Administration portfolio of housing loans those loans that would be expected to be most easily sold to the public with the least cost to the government. Such loans are more likely to be non-interest subsidy loans with relatively high note rates, substantial remaining terms and no deficiency experience. It is also aware that the Secretary shall have to redeem the Certificates of Beneficial Ownership held by the Federal Financing Bank (FFB) in order to free these loans so that he may sell them to the public. Such redemptions will involve an interest penalty cost to hold the FFB harmless. The authority to redeem these loans is already within the power of the Secretary of Agriculture and the Committee expects that the FFB will expeditously and fully cooperate with the Secretary.

Analyses prepared for the House Budget Committee show that the yields required by private investors would be higher than the average yields from the note rate of interest that these loans usually carry. Among other factors, the fact that there is no established secondary market for these loans will mean that private investors will require higher yields. In pricing the loans required to be sold, the Secretary of Agriculture is expected to set prices that take into account these factors and the relative lower liquidity of these loans.

The Committee is also concerned that the Secretary of Agriculture, to the maximum extent practicable, give consideration to the protections due the borrowers when setting forth the guidelines that govern the sale and, if appropriate, the servicing of these loans. While it may not be possible to extend every protection afforded borrowers when the loan was made by the Secretary, all such protections that may be extended without adversely affecting the expeditious sale of these loans to the public should be provided.

Finally, the Committee has included certain reporting requirements among the provisions to assure that the outlay reductions are actually achieved. The Secretary of Agriculture and Board of Directors of the Export-Import Bank are required to report to the House Banking, Finance and Urban Affairs and the Senate Banking, Housing and Urban Affairs Committees 60 days following enactment of this section and each subsequent 60-day period throughout fiscal year 1989 on the progress made in actually realizing the required proceeds from the sale of loans so that the Congress may be alerted in a timely manner to any problems that prevent its intended outlay reduction objective from being achieved. In addition, prior to the first sale of Export-Import Bank loans and the first sale of rural housing loans, a report containing the details of proposed sales shall be provided to such Committee. It has also required the Comptroller General to audit and evaluate the progress and results of the Secretary of Agriculture and the Board of Directors of the Export-Import Bank in undertaking these loan sale activities in order to further assist the Committees in achieving the objectives of this action.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 30, 1986.

Hon. FERNAND J. ST GERMAIN,
Chairman, Committee on Banking, Finance and Urban Affairs,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached revised table analyzing the budget impact of the reconciliation recommendations of the House Committee on Banking, Finance and Urban Affairs, as ordered reported on July 25, 1986. The revision incorporates new information provided by the Export-Import Bank on scheduled repayments of loans it would sell.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

JAMES BLUM
(For Rudolph G. Penner).

RECONCILIATION RECOMMENDATIONS FOR FISCAL YEAR 1987—HOUSE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

FEDERAL BUDGET IMPACT RELATIVE TO CURRENT LAW AND THE BUDGET RESOLUTION BASELINE

[By fiscal year, in million of dollars]

	1987	1988	1989	1990	1991
Direct spending:					
Sale of rural housing loans[1]:					
Function 370:					
Estimated budget authority	642		264	-90	-117
Estimated outlays	-1,158	-523	-546	-89	-104
Function 900 (Interest):					
Estimated budget authority	-247	116	197	434	449
Estimated outlays	-247	116	197	434	449
Sale of Eximbanks loans[2]:					
Function 150:					
Estimated budget authority		-350			
Estimated outlays	-500	119	110	93	65
Function 900 (Interest):					
Estimated budget authority		39	39	39	39
Estimated outlays		39	39	39	39
Total—direct spending:					
Estimated budget authority	395	-195	500	383	371
Estimated outlays	-1,905	-249	-200	477	449

[1] The reconciliation recommendations would require the Farmers Home Administration (FmHA) to sell loan assets in amounts sufficient to lower net outlays (increae receipts) by $1,158 million in fiscal year 1987, $523 million in 1988, and $546 million in 1989. The terms and conditions of the sales would be determined by the Secretary of Agriculture. The amount of loans that would ultimately be sold would depend upon the loans chosen for sale and the market response. For this estimate, it was assumed that high quality loans bearing interest rates comparable to the current market would be chosen. It was further assumed that the sales would be made without recourse to the federal government. Under the assumptions used, an estimated $3,440 million of loans would have to be sold over the three-year period.

[2] The Committee's recommendations would require the Export-Import Bank to sell sufficient loan assets to reduce outlays by $500 million in 1987. The terms and conditions of the sales would be determined by the Board of Directors of the bank. The loans are assumed to be sold without recourse to the federal government. An estimated $643 million of loans would be sold in order to meet the savings specified in the legislation.

CHANGES IN EXISTING LAW

In compliance with clause 3 of the rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

EXPORT-IMPORT BANK ACT OF 1945

SEC. 15. SALE OF BANK LOANS.

(a) REQUIRED SALES TO PUBLIC.—The Board of Directors shall take such actions as may be necessary to ensure that loans made by the Bank under this Act are sold to the public in amounts sufficient to provide a net reduction in outlays of not less than $500,000,000 in fiscal year 1987 from the proceeds of such sales.

(b) PROCEDURES AND TERMS OF SALES.—

(1) ESTABLISHMENT OF GUIDELINES.—The Board of Directors shall establish specific guidelines for the sale of loans under subsection (a). The guidelines shall address the procedures and terms applicable to the sale of the loans, including terms that will ensure that the sale of the loans will bring the highest possible return to the Federal Government.

(2) ASSISTANCE BY FEDERAL FINANCING BANK.—In selling loans to the public under subsection (a), the Board of Directors shall use the Federal Financing Bank as an agent to sell the loans, unless the Board of Directors determines that the sale of loans directly by the Export-Import Bank will result in a higher rate of return to the Federal Government. If the Board of Directors determines to sell loans directly under this paragraph, the Board shall notify the Federal Financing Bank of such determination and the loans involved and, to the extent practicable, shall implement any reasonable recommendations that may be made by the Federal Financing Bank with respect to the procedures and terms applicable to the sale.

(c) REPORTS TO CONGRESS.—

(1) NOTIFICATION OF INITIAL LOAN SALE.—Not less than 20 days before the initial sale of loans under subsection (a), the Board of Directors shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives containing an estimate of the amount of the discount at which loans will be sold at such initial sale and an estimate of the discount at which loans will be sold at each subsequent sale during fiscal year 1987.

(2) REPORTS BY BANK.—The Board of Director shall submit periodic reports to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives setting forth the activities of the Board of Directors under this section. Each such report shall include the guidelines established under subsection (b)(1), a description of the loans sold under subsection (a), and an analysis of the net reduction in outlays provided by the sale of such loans. The Board of Directors shall submit the first report under this paragraph not later than 60 days after the date of the enactment of this Act, and shall submit subsequent reports each 60 days thereafter through the end of fiscal year 1987.

(3) REPORTS BY COMPTROLLER GENERAL.—The Comptroller General of the United States shall conduct an audit and evaluation of the activities of the Board of Directors described in each report submitted under paragraph (1) or (2), in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Board of Directors as the Comptroller General determines necessary to conduct each such audit and evaluation. The Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report setting forth the results of each such audit and evaluation.

(d) SECURITIES LAWS NOT APPLICABLE TO SALES.—The sale of any loan by the Bank under this section shall not be subject to any Federal or State securities law.

TITLE IV—COMMITTEE ON ENERGY AND COMMERCE

House of Representatives,
Committee on Energy and Commerce,
Washington, DC, July 25, 1986.

Hon. William H. Gray III,
Chairman, Committee on the Budget,
House of Representatives, Washington, DC.

Dear Mr. Chairman: I am transmitting herewith the recommendations of the Committee on Energy and Commerce for changes in laws within its jurisdiction pursuant to section 310 of the Congressional Budget Act of 1974 and the reconciliation instructions of section 2(e) of the Concurrent Resolution on the Budget—Fiscal Year 1987 (S. Con. Res. 120).

These recommendations are embodied in the two enclosed Committee Prints approved by the Committee on July 22 and 23, 1986. The Committee Print pertaining to energy and related matters is accompanied herein by an appropriate legislative report. The report accompanying the Committee Print pertaining to health matters will be transmitted to you no later than noon on Monday, July 28, 1986, pursuant to agreement with your staff. The necessary Congressional Budget Office (CBO) estimates will be transmitted as soon as they are received from CBO.

As you may know, the Committee, after extensive consideration and debate, failed to approve legislation concerning the distribution of $2.45 billion in certain petroleum overcharge funds, as assumed in the Conference Report on the budget. On July 7, 1986, subsequent to the adoption of the Conference Report, Judge Frank G. Theis of the United States District Court for the District of Kansas approved a proposed global settlement of long-pending litigation commonly known as the *Stripper Well* case. The Conference Report had anticipated this possibility and provided that the Committee would be held harmless in reconciliation for any savings that became "unachievable" as a result of judicial or administrative actions beyond the Committee's control.

In response to a request from this Committee to the Committee on the Budget for guidance as to implications of this court decision for the reconciliation process, you wrote to me on July 17, 1986, and stated that based on the information then available, "the achievable recoupments of oil overcharge funds would total $1.7 billion over the fiscal year 1987-89 period." Accordingly, the savings assigned by the Budget Committee to the Energy and Commerce Committee were reduced by $750 million, an amount which in the opinion of the Budget Committee took account of the effect of the court's decision.

As the enclosed report notes, the Committee is greatly concerned about the federal deficit in general and about the impact of the deficit on programs under its jurisdiction. Before the federal district court in Kansas issued its Order, the Committee undoubtedly would have followed the instructions of the budget resolution to the letter. However, with the advent of the court's Order following passage of the budget resolution, significant questions arose concerning the proposed legislation.

Specifically, a majority of the Committee's Members was skeptical of the view expressed by the Budget Committee concerning the impact of Judge Theis' Opinion and Order on crude oil overcharge monies. These Members could not fully accept those views. The Committee concluded that all crude oil funds governed by the court's Order were unreachable by legislative action and adopted an amendment to that effect. While the matter surely is not free from doubt, and a different interpretation is certainly possible, the Committee believes that the savings assumed to come from the governed funds are "unachievable" within the meaning of the "hold harmless" provision in the Conference Report on the budget.

Notwithstanding these difficulties, however, the committee did report legislation that will recoup a portion of the funds anticipated by the budget resolution. In addition, the Committee adopted the reconciliation assumptions concerning user fees for the Nuclear Regulatory Commission and the Federal Energy Regulatory Commission.

In the health field, the Committee adopted extensive provisions that achieve very substantial savings in the Medicare Part B program. Because the Committee shares jurisdiction over Part B with the Ways and Means Committee, which also has sole jurisdiction over the much larger Part A, the savings assumed by the budget resolution to stem from Medicare reforms are, as you know, shared by both Committees.

I believe that the enclosed recommendations, when combined with the non-duplicative savings achieved by Ways and Means in Medicare, will meet or exceed the budget resolution's targets for our Committee.

I greatly appreciate your assistance and cooperation, and that of your staff, during this process, and I commend you for your outstanding leadership in this area.

Sincerely,

JOHN D. DINGELL, *Chairman.*

Enclosures.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE BUDGET,
Washington, DC, July 17, 1986.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your question as to what legislation would be expected from the Energy and Commerce Committee to satisfy its obligations under the reconciliation instructions on oil overcharge funds contained in S. Con. Res. 120, the Congressional Budget Resolution for Fiscal Year 1987, adopted on June 26, 1986.

Since the resolution was adopted, the District Court in Kansas approved the proposed "Stripper Well Settlement" on July 7. This clearly will reduce the total savings that could be recouped by the passage of the legislation anticipated by the Budget Resolution. In fact, the Budget Resolution conference report anticipated such a possibility, and stated that your Committee "would be held harmless for the savings that could not be achieved, if any," I have enclosed a copy of the relevant conference report text.

However, the conference report makes it clear that the Resolution anticipated that legislation would be reported by your Committee to recoup whatever amounts were still achievable. Based on the latest information available, the achievable recoupments of oil overcharge funds would total $1.7 billion over the fiscal year 1987–89 period. Of this, as you know, the Resolution assumed that $0.25 billion a year in recouped funds would be retained by the legislation for directly funding DOE's state energy conservation grant programs.

Therefore, passage of this legislation, pursuant to the instructions, would still recover substantial achievable funds for the U.S. Treasury, and make a contribution toward reducing our present Federal budget deficits. I hope this information is useful to you. Thank you for your cooperation in this important task.

Sincerely,

WILLIAM H. GRAY III, *Chairman.*

REPORT TO ACCOMPANY RECOMMENDATIONS FROM THE COMMITTEE ON ENERGY AND COMMERCE (ENERGY MATTERS)

PURPOSE AND SUMMARY

The Committee Print, as amended, achieves outlay savings of $721 million over three years in energy and energy-related programs, pursuant to the reconciliation instructions given to the Committee in the Conference Report on the budget, S. Con. Res. 120 (House Report 99-664).

The Conference Report on the budget instructed the Committee to achieve outlay savings totalling $5.6 billion over three years in reconciliation. Of that amount, $3.25 billion were assumed to be saved through Medicare provider payment reforms. The remaining $2.35 billion were assumed to come from savings in the energy area. These savings were broken down as follows (in millions):

	Fiscal Year—						Three-year	
	1987		1988		1989		BA	0
	BA	0	BA	0	BA	0		
FERC user fees	−31	−31	−56	−56	−56	−56	−143	−143
NRC user fees	−100	−100	−100	−100	−100	−100	−300	−300
Oil overcharges	−994	−1,186	−344	−365	−344	−356	−1,682	−1,907

On July 7, 1986, subsequent to the adoption of the Conference Report on the budget, Judge Frank G. Theis of the United States District Court for the District of Kansas approved a proposed global settlement of long-pending litigation captioned *In re: The Department of Energy Stripper Well Exemption Litigation,* M.D.L. 378, commonly known as the *Stripper Well* case, which had been negotiated between the Department of Energy (DOE), intervenors; refiners, the states, and others, and which provide for the distribution of certain crude oil overcharge funds collected and to be collected.

The Conference Report had anticipated this possibility and provided that the Committee would be held harmless in reconciliation for any savings that became "unachievable" as a result of judicial or administrative actions beyond the Committee's control. Pursuant to a letter from Chairman Gray, a copy of which is included in this report, the savings assigned by the Budget Committee to the Energy and Commerce Committee were reduced by $750 million, an amount which in the opinion of the Budget Committee took account of the effect of the court's decision.

LANGUAGE ON OIL OVERCHARGE FUNDS

The conferees assume that the Congress will enact legislation to recover $2.45 billion in additional oil overcharge funds over the next three years, of which $1.25 billion will be recovered in fiscal year 1987. The conferees also assume full funding for the LIHEAP and DOE weatherization programs over the next three years. The House conferees will further elaborate on their assumptions below.

The House conferees assume that legislation will be enacted providing for the United States to receive, beginning on October 1, 1986, all amounts recovered and to be recovered from oil overcharge cases (which amounts have been determined not to be Federal funds), less the amounts required, as provided in such legislation, to provide overcharged persons with compensation as direct restitution in appropriate administrative and judicial proceedings.

The House conferees assume that oil overcharge funds presently collected and held in escrow, or otherwise, and undistributed pursuant to any administrative and judicial action, as well as future funds, will be available for distribution pursuant to such legislation. The House conferees assume that enactment of this policy will recover $1.25 billion in additional oil overcharge funds in fiscal year 1987, and $2.45 billion over the three-year period. If, however, actions beyond the control of the Congress or the administration should make part of these savings unachievable, the committees of jurisdiction would be held harmless for the savings that could not be achieved, if any.

The House conferees also assume that the legislation will provide that part of the oil overcharge funds recovered ($0.25 billion a year for three years) will be used annually, in addition to the funding assumed below, to make indirect restitution to consumers through the four DOE State Energy Conservation Grant programs referred to in the Warner amendment of 1982.

To ensure that such individual restitution supplements and does not replace existing funding, and that low-income citizens continue to receive this assistance even though the States will not directly receive further oil overcharge funds, the House conferees also assume, in Functions 270 and 600, the enactment of a three-year advance appropriation for the DOE low-income weatherization program and the HHS low-income energy assistance program at the full funding levels assumed in those functions.

The main provisions of the Committee Print, as amended, will:

Increase Nuclear Regulatory Commission (NRC) Annual Charges, or "NRC user fees."

Impose Federal Energy Regulatory Commission (FERC) Annual Charges, or "FERC user fees."

Provide for the distribution of funds commonly known as "oil overcharge funds."

Change existing law to reduce certain paperwork and survey requirements at the Department of Energy.

Reauthorize the Strategic Petroleum Reserve (SPR) at a level consistent with that called for by the budget resolution; grant authority to the Secretary of Energy to purchase SPR oil from stripper well producers to prevent stripper wells from being shut in; and change existing law affecting federal petroleum reserves in a manner that will provide for wiser national energy policy.

BACKGROUND AND NEED FOR THE LEGISLATION

A. NRC user fees

The Conference Report on the budget assumed that the Committee would achieve $300 million in savings over three years by increasing NRC user fees. Subtitle A of the Committee Print increases NRC user fees by more than the amount assumed in the budget.

Earlier this year, Congress enacted the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (P.L. 99-272). Section 7601 of that law directs the NRC to collect annual charges from its licensees. The law requires that the annual charges, when added to fees collected by the NRC pursuant to the Independent Offices Appropriation Act, be equal to one-third of the NRC budget. The NRC budget in fiscal year 1986 is $405 million. The annual charges and fees in FY 1986, therefore, will total $135 million, of which $97 million will be collected pursuant to the NRC's new authority to collect annual charges.

The NRC recently proposed rules to collect these annual charges. The rules would collect approximately $1 million from each reactor licensee and applicant. The rules would also collect small amounts from large uranium fuel cycle licensees. Small licensees would pay no charges, because the NRC found that the costs of collecting the minimal charges would be greater than the receipts.

The NRC also sent a report to Congress on July 7, 1986, pursuant to section 7601 of COBRA, explaining its actions and providing recommendations with respect to the structuring of its annual charges. The NRC recommended that the legislation be modified to require a specific fee to be placed upon nuclear power plants based upon rate capacity. The NRC expressed concern that current law may lead to court challenges of the fees imposed, because the language may not be deemed specific with respect to the costs to be considered.

The Reagan Administration has also endorsed the concept of annual charges to be levied upon nuclear power reactors to recover 50 percent of the NRC budget.

B. FERC user fees

FERC has requested legislation since 1982 to authorize it to assess annual charges on the companies subject to its regulation. A proposal requesting such authority was again submitted to the Congress in May 1985. The stated purpose of the proposal was "to make clear the Commission's authority to reduce the costs of energy regulation to the taxpayers by recovering a greater share of those costs, in the form of annual charges and user fees, from energy companies that operate under Commission license or authorization."

The budget submitted by the President for fiscal year 1986 proposed enactment of the legislation submitted by FERC. During the reconciliation process for that fiscal year, the Energy and Commerce Committee recommended and the House passed legislation to impose FERC user fees. This provision was dropped in conference with the Senate, which had not included such fees in its reconciliation bill.

The budget submitted by the President for fiscal year 1987 again proposed enactment of the legislation submitted by FERC. As in the case of fiscal year 1986, the Conference Report on the budget assumed that the Committee would achieve savings in reconciliation by reporting legislation that would impose a system of FERC user fees. Subtitle B of the Committee Print—substantially identical in substance to last year's provision—is responsive to those assumptions.

The only authorities currently available to FERC to assess fees to reimburse the Federal government for FERC's work are section 10(e) of the Federal Power Act and the Independent Offices Appropriations Act of 1952. Under the former authority, annual charges can be and are assessed to companies holding hydroelectric licenses. Under the latter authority, only certain types of fees can be assessed; these fees cover only a relatively small portion of the costs of operating FERC.

FERC does not currently have authority to assess charges on regulated companies for the remainder of the work performed by FERC in regulating oil pipelines, natural gas pipelines, and public utilities. The legislation gives that authority to FERC.

C. Oil overcharge funds

The Conference Report on the budget assumed that substantial deficit reduction would be achieved through the enactment of legislation to recoup certain oil overcharge funds for the U.S. Treasury. Three-year outlay savings in excess of $1.9 billion were expected to realized in reconciliation from this source alone.

The Committee is greatly concerned about the federal deficit in general and about the impact of the deficit on the programs under its jurisdiction. The Committee applauds Chairman Gray and the Budget Committee for its yeoman efforts at budget-cutting. Before the federal district court in Kansas issued its Order, the Committee undoubtedly would have followed the instructions of the budget resolution to the letter. However, with the advent of the court's Order following passage of the budget resolution, significant questions arose concerning the proposed legislation.

The Committee was skeptical of the view expressed by the Budget Committee concerning the impact of Judge Theis' Opinion and Order on crude oil overcharge monies. The Committee could not fully accept the view. The matter surely is not free from doubt, and a different interpretation is certainly possible. The Committee concluded, however, that all crude oil funds governed by the court's Order were unreachable by legislative action and adopted an amendment to that effect. Thus, the Committee believes that the savings assumed to come from the governed funds are "unachievable" within the meaning of the "hold harmless" provision in the Conference Report on the budget.

Notwithstanding these difficulties, however, the Committee in Subtitle C did report legislation that will recoup some of the funds anticipated by the budget resolution.

D. Information and study requirement

Part E of Title III of the Energy Policy and Conservation Act (EPCA) requires the Department of Energy (DOE) to collect data designed to support DOE's industrial energy conservation program. Congress has also provided funds for DOE's Energy Information Administration (EIA) to develop a broader data collection effort manufacturing sector energy consumption, the Manufacturing Energy Consumption Survey (MECS).

The Administration has been reluctant to implement MECS because it would duplicate data collected by the EPCA-required form. The Office of Management and Budget, however, recently approved the relevant parts of the MECS, and EIA is ready to implement it as required by the fiscal year 1986 Interior appropriations bill.

The elimination of the EPCA-required form would result in savings of $300,000 in each of fiscal years 1987, 1988, and 1989.

To ensure that sufficient data is available on the consumption patterns of the manufacturing sector and on fuel switching, the triennial MECS survey should be put in place as submitted by EIA to OMB for forms clearance, and as required by law, assuming the EPCA form is eliminated. As OMB has acknowledged:

> MECS is a relatively short form to be completed triennially, beginning with 1985 [data], by a sample of 2,000 manufacturing establishments. It consists of three main Sections. Section I, "Combustible Energy Sources," requires an establishment to report, for each combustible energy source, the quantity purchased by the establishment, the total expenditure on that energy source, the amounts consumed as fuel and as non-fuel, the amount produced onsite, and the shell storage capacity. * * * Section II, "Non-Combustible Energy Sources," calls for essentially similar data for electricity and steam. Section III relates to the fuel switching capability of the establishment to and from oil.

Since the current MECS survey is funded, there is no additional cost to the fiscal year 1987 budget. The next MECS collection would be required in fiscal year 1989.

E. Strategic Petroleum Reserve

The budget resolution, as passed by the House, contained language expressing the sense of the Congress reaffirming the policy to fill the Strategic Petroleum Reserve (SPR) to 750 million barrels. The language also recommended that oil should be purchased for the SPR in a way designed to help domestic stripper oil well producers minimize the shutting in of stripper well production. The Senate accepted this provision in conference. Accordingly, section 9 of the conference version contains this expression of congressional will.

Subtitle E of the Committee Print addresses the policy of section 9 and contains other provisions designed to improve the administration of federal petroleum reserves.

COMMITTEE CONSIDERATION

On July 22, 1986, the Committee met in open session and, by voice vote, a quorum being present, ordered transmitted to the Committee on the Budget a Committee Print, as amended, in accordance with section 310 of the Congressional Budget Act of 1974.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(1)(3)(A) of Rule XI of the Rules of the House of Representatives, the Committee makes oversight findings that are reflected in this legislative report.

The Committee makes the following additional oversight findings specifically with respect to the oil overcharge issue:

The Subcommittee on Oversight and Investigations of this Committee has for many years been conducting oversight and investigations of the activities of the DOE and the Economic Regulatory Administration (ERA) concerning the oil overcharge enforcement program. In 1985, the Subcommittee became concerned about DOE's handling of the *Stripper Well* litigation and the distribution of the *Exxon* funds. More recently, the Subcommittee initiated an investigation into plans by the DOE to conduct a reduction-in-force (RIF) of some ERA employees at its Dallas and Houston offices. As a result, Secretary Herrington, to his great credit, cancelled the RIF for a period of 45 days while the investigation continues.

In the case of the *Stripper Well* litigation, in March 1984 the Subcommittee expressed concern that the Office of Hearings and Appeals (OHA) fact-finding report for the court on how to distribute *Stripper Well* funds was being rewritten by DOE. As a result, the court, in May 1985, issued an order requiring that the OHA report be prepared without DOE review or influence. It was released in June 1985, and the DOE issued its Statement of Restitutionary Policy urging that all *Stripper Well* funds be deposited in the U.S. Treasury.

In August 1985, OHA provided, at the Subcommittee's request, an April 1, 1985 draft of the final OHA report that differed substantially from the June version. In September, the Subcommittee requested that the DOE release the report to the public. DOE declined. However, on motion of one of the parties, the court in November 1985 ordered the report released. The court said:

> In a previous order, this Court held that while "consultation by the OHA with senior policy makers of the DOE would be appropriate," the Court "did not intend to allow the DOE to make the policy decision on whether such an attempt at tracing is feasible or how to actually make res-

titution * * *." *In Re Department of Energy Stripper Well Exemption Litigation,* 608 F. Supp. 1107, 1108 (D. Kan. 1985). In light of this Court's previous ruling, the Court finds that the refiner-plaintiffs' charge of under influence is serious. Indeed, Congressman Dingell, who reviewed both the original and the final reports, commented in strong language:

> OHA has been beaten into submission by the [DOE's] "internal" [review] process * * *. Its draft report was not liked by the DOE officials. This was understood by OHA and it was rewritten to be a more bland report with a fact-finding more to the DOE's liking.

After negotiations began last November in the *Stripper Well* case, the Subcommittee held hearings on February 24, 1986 concerning the negotiations and the contents of the proposed settlement. The Subcommittee was also concerned that DOE was not planning to monitor the States' use of *Exxon* oil overcharges, although in late 1985 DOE committed to such monitoring in letters to the Subcommittee. As a result of the hearings, the settlement agreement was revised to meet some of the Subcommittee's concerns.

After the hearing, Subcommittee Chairman Dingell corresponded with the court (after appropriate service on all parties) concerning the monitoring issue. In an April 11, 1986 letter, Judge Thomas A. Flannery said:

> Reference is made to your letters of February 26, March 13 and April 7, 1986, in regard to the responsibility of the Department of Energy to monitor the disbursement by the States of the overcharge funds received by the government from Exxon in the above-entitled case.
>
> Mr. Herrington, the Secretary of Energy, wrote to me by letter dated March 31, 1986, setting forth his position that the Department of Energy does not propose the monitor the Exxon distributions exactly the same way as it does distribution of appropriated funds under the Department's regulations.
>
> I have today replied to Mr. Herrington's letter and am enclosing a copy of the reply herewith. As you will see from my reply, I am in basic agreement with your view that the Department of Energy has the responsibility of monitoring the disbursement of the Exxon overcharge funds.
>
> I appreciate your bringing this problem to my attention.

In his letter to the Secretary, the Judge said:

> My intention in issuing the Judgment and Order in this case was to insure that the money recovered should be used by the States to assist the victims who had been injured by Exxon's actions. I assumed that the Department of Energy would follow its usual procedures in making certain that the money was used properly, and I never intended that any different scheme to effect restitution was

> to be set up whereby the Department of Energy would have a mere advisory role to the States and the court. Such a procedure has obvious potential for abuse.
>
> It is true, as you state in your letter, that the Governors have given every indication in their statements of assurance that they intend to comply with the requirements of my Order, but that is not enough. The Department of Energy, in my opinion, must exercise oversight responsibility and actively monitor the disbursement of these funds as though they were appropriated funds. This will insure that the intent of my Order is carried out and that the victims of the overcharges will receive, as nearly as possible, the restitution the court intended that they receive.

Later, after further correspondence by the Subcommittee, the court, in a June 10, 1986 ruling, issued a new order stating that:

> [T]he applicability of Department of Energy Ruling 1983-1 to the funds involved in this case is confirmed; * * *
>
> [C]onsistent with Ruling 1983-1, the States shall not be required to provide matching funds; * * *
>
> [T]he States' request that they be allowed to purchase capital equipment or materials with the funds involved in this case, is denied; * * *
>
> [T]he States' request to use a portion of the funds for administrative expenses is denied as premature; and * * *
>
> [U]nder no circumstances shall any of the funds involved in this case be spent on attorneys' fees regardless of how those fees are characterized.

In addition, the Subcommittee has also been concerned about DOE efforts to RIF personnel, particularly lawyers and auditors who are needed for completion of the remaining caseload, and particularly the litigation caseload. The RIF was first announced in April. On May 5, June 9, and June 24, the Subcommittee questioned the basis for the RIF. Chairman Dingell said:

> A few days ago, my colleague, the distinguished Ranking Minority Member of the Committee on Energy and Natural Resources, Senator J. Bennett Johnston, wrote to the Secretary about this program. He cited earlier quotes from the former ERA Administrator who asserted in 1981 and 1982 that his "goal" was to "complete this work and close the Agency on September 30, 1982." He then waffled, in a reply to the Senate Committee's Chairman by saying that by September 30, 1982, "we will have every unresolved meritorious case either settled or ready for litigation."
>
> At this Subcommittee's hearings in 1981, 1982, and 1983 on the ERA, this Subcommittee continually observed that Mr. Hanzlik's goals were interesting, but totally unrealistic, particularly in light of efforts to RIF qualified and experienced personnel. The Subcommittee anticipated the heavy litigation load and the need for auditor support of those cases and doubted that the other cases would be completed by the September 1982 date. Obviously, we were

> right. But that is not satisfying. What the Subcommittee wants is an avoidance of the mistakes of 1981 and 1982 in 1986 and 1987.
>
> While I am not in full agreement with all of Senator Johnston's comments in his letter to the Secretary (a copy of which he kindly shared with me), I fully agree ERA needs to make "clear" the "future plans for the program." The Senator wants these plans before "Senate confirmation of Marshall Staunton as Administrator of ERA." This Subcommittee wants them before this RIF is undertaken in any form. ERA cannot and should not continue to operate in a vacuum. All agree that ERA compliance should not perpetuate itself. However, ERA should not be terminated by default or through ill-conceived RIFs that ultimately will cause it to lose cases or settle inappropriately. There is a need for a realistic assessment of its personnel needs, particularly the mix of personnel, whether located in the field or here, to bring all matters, including litigation, to an early close. Artificial goals, inspired by ideology or other beliefs unrelated to real needs, should be avoided. The plans must be based on a realistic assessment of the time it will take to end all investigations properly and bring them to settlement or litigation and to complete all administrative and judicial litigation, remembering that experience and knowledge, wherever located, can expedite, rather than delay, termination of the enforcement program. I request such plans.

As already noted, the RIF scheduled for June 20 was cancelled. On July 21, the Subcommittee received ERA's reply. The reply states that ERA has "sufficient funds to cover the salaries for all personnel currently on board without a RIF." Still, ERA wants to conduct the RIF next month without providing the required plan. Yet it is the Subcommittee's understanding that ERA compliance is at or very close to the line where further cuts will emasculate the program and threaten successful prosecution of all enforcement and litigation cases. The Subcommittee's investigation is continuing.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that the Committee Print will result in budget savings as follows:

CONGRESSIONAL BUDGET OFFICE ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 28, 1986.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for the Committee print reflecting the budget reconciliation actions taken by the Committee on Energy and Commerce on July 22, 1986, with respect to energy and related matters.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

C.G. NUCKOLS
(for Rudolph G. Penner).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Not yet assigned.

2. Bill title: Budget Reconciliation Actions—Energy and Commerce Programs.

3. Bill Status: Committee print adopted by the House Committee on Energy and Commerce, July 22, 1986.

4. Bill purpose: The bill contains five subtitles: (1) Nuclear Regulatory Commission Annual Charges, (2) Federal Energy Regulatory Commission Annual Charges, (3) Petroleum Overcharge Distribution, (4) Information and Study Requirements, and (5) Strategic Petroleum Reserve.

5. Estimated cost to the Federal Government: The table below summarizes the bill's estimated impact on the federal budget, relative to both current law and the budget resolution baseline, as adjusted for enacted legislation. The House Budget Committee has specified that reconciliation savings are to be measured from the baseline used by the budget conferees adjusted for subsequently enacted legislation.

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
Changes in direct spending:					
NRC annual charges:					
Estimated budget authority	−139	−144	−145	−158	−165
Estimated outlays	−139	−144	−145	−158	−165
FERC annual charges:					
Estimated budget authority	−39	−40	−42	−43	−44
Estimated outlays	−39	−40	−42	−43	−44
Petroleum overcharges:					
Estimated budget authority	−144				
Estimated outlays	−336	21	143	19	9
Total direct spending:					
Estimated budget authority	−322	−184	−187	−201	−209
Estimated outlays	−514	−163	−44	−182	−200

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
Changes in authorizations:					
Information and study requirements:					
Authorization level	([1])	([1])	([1])	([1])	([1])
Estimated outlays	([1])	([1])	([1])	([1])	([1])
Strategic petroleum reserve:					
Authorization level	200	194	200		
Estimated outlays	200	194	200		
Total authorizations:					
Authorization level	200	194	200	([1])	([1])
Estimated outlays	200	194	200	([1])	([1])

[1] Less than $500,000.

The budget impact of this bill falls within budget functions 270 and 950.

Basis of estimate:

Subtitle A of the bill would require the Nuclear Regulatory Commission (NRC) to assess and collect annual charges from its licensees, beginning with fiscal year 1987, to recover all of the regulatory costs of the commission for each fiscal year. Based on information provided by the commission, CBO estimates that regulatory costs constitute approximately 65 percent of NRC expenditures. Under current law, the NRC must assess and collect charges to recover 33 percent of totel NRC costs. Under the budget resolution baseline, NRC costs are projected to be $414 million in fiscal year 1987, rising to approximately $490 million in fiscal year 1991.

Subtitle B of the bill requires the Federal Energy Regulatory Commission (FERC) to assess and collect annual charges from interstate natural gas pipelines, interstate oil pipeline carriers, and public utilities. The fees shall be assessed and collected in each fiscal year, beginning with 1987. When coupled with the fees assessed under current policies, these charges must recover the costs incurred with respect to the regulation of these services. For the purpose of this estimate, CBO assumes that the bill would authorize the commission to recover all but 10 percent of the FERC expenditures each year. (This estimate assumes that FERC would not recover the cost of regulating cogeneration and small power production, of rulemaking and adjudicatory proceedings, and of policy initiatives.) In addition to the estimated collections of approximately $50 million per year under current law, this bill would increase collections and thus reduce federal outlays by $39 million in fiscal year 1987, rising to $44 million in fiscal year 1991.

Subtitle C is designated the "Petroleum Overcharge Distribution and Restitution Act of 1986." It sets procedures for the deposit and disbursement of funds derived from judicial and administrative proceedings concerning actual or alleged petroleum pricing and allocation violations. The procedures established by this subtitle do not apply to: (1) amounts actually disbursed before enactment of the bill; (2) amounts governed by the settlement in *In Re: The Department of Energy Stripper Well Exemption Litigation,* M.D.L. No. 378, in the U.S. District Court of Kansas; and (3) amounts designated by judicial or administrative order or judgment for disbursement to parties identified as injured by the violation or alleged violation of former petroleum pricing and allocation regulations.

Based on information provided by the Department of Energy, CBO estimated that the provisions of Subtitle C will be applied to the disbursement of approximately $1 billion in petroleum overcharges. This estimate assumes future settlements or judgments totaling $250 million for crude oil cases not governed by the stripper well agreement cited above, and $750 million for petroleum products cases. Of these amounts, it is expected that $50 million of the crude oil funds and $250 million of the products funds will be paid directly to injured parties. CBO further assumes that the remaining $200 million in crude oil funds will be made available in fiscal year 1987. Under current policies, half of this money would be disbursed to the states and half would be deposited in the Treasury; if this legislation is enacted, all $200 million would go to the federal government. CBO assumes that from remaining funds for product cases, $300 million will be made available in fiscal year 1987, and $200 million will be made available in fiscal year 1988. Currently, all such funds are expected to be distributed to states; if this legislation is enacted, all $500 million would go to the federal government. Consistent with the assumptions of the budget resolution, CBO treats receipts from these provisions as undistributed offsetting receipts.

Subtitle C provides for indirect restitution for petroleum overcharges of up to $256 million per year. This indirect restitution would be carried out by providing grants to states for energy conservation programs. Based on the above estimates of available funds, budget authority of $256 million in 1987 and $200 million in 1988 would be provided by this legislation. The net budget authority change for Subtitle C is estimated to be—$144 million in fiscal year 1987. There is no net budget authority change for all subsequent years. Outlays for the indirect restitution provision were estimated using historical spendout rates for energy conservation grants. The net outlay impact for this subtitle reflects the receipts of oil overcharge funds ($400 million in 1987 and $200 million in 1988), offset by the spending for indirect restitution.

Subtitle D amends the Energy Policy and Conservatioin Act by striking a provision that requires the Department of Energy to conduct certain energy consumption studies. The subtitle also requires the Department of Energy to conduct a study on domestic oil production and refining capacity. The provisions of this subtitle are expected to reduce federal outlays by less than $500,000 per year, if appropriations are correspondingly reduced.

Subtitle E provides authorizations for appropriations for the Strategic Petroleum Reserve. The authorized amounts are those assumed in the House version of the conference agreement on the budget resolution, and are approximately $200 million per year higher than the resolution baseline. The subtitle also establishes new criteria for limiting production from the Naval Petroleum Reserve (NPR), dependent on a rate at which the Strategic Petroleum Reserve is filled. Assuming appropriation of the authorized amounts. CBO does not expect NPR production to be curtailed as a result of these provisions.

6. Estimated cost to State and local governments: The fees mandated by this bill would affect utility rates, and thus indirectly increase the utility costs of state and local governments. This increase is not expected to be significant.

7. Estimate comparison: None.

8. Previous CBO estimate: On July 28, 1986, the Congressional Budget Office prepared a cost estimate for reconciliation provisions recommended by the Committee on Interior and Insular Affairs. The Interior Committee is also proposing to increase NRC fees, but would establish a different basis for the fees than would the Energy and Commerce Committee. CBO estimates that the Interior Committee's proposal would result in additional receipts of $109 million in 1987 and $481 million over the 1987-1991 period, relative to the budget resolution baseline.

9. Estimate prepared by: Pete Fontaine.

10. Estimate approved by: Robert A. Sunshine (for James L. Blum, Assistant Director for Budget Analysis).

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported Committee Print:

Because the Committee Print will reduce the federal deficit, this measure carries with it no inflationary impact.

SECTION-BY-SECTION ANALYSIS

Sec. 4001—NRC annual charges

The proposed bill would replace the current fee scheme established by section 7601 of COBRA with a provision similar to the version passed by the House in its fiscal year 1986 reconciliation bill. It establishes clearer standards for the annual charges to protect the charges from court challenges, and will require that 100 per cent of the NRC's regulatory costs be recovered through fees and charges. The charges, when combined with other fees levied by the NRC, would total about $270 million in FY 1987, or about $135 million more than would be collected under current law.

Subsection (a) provides authority for the NRC to collect annual charges and makes clear that the authority is in addition to the authorities contained in the Independent Offices Appropriations Act.

Subsection (b) requires the NRC to collect charges and fees at an amount equal to the cost of activities related to regulation. The provision utilizes definitions taken directly from the NRC-proposed regulations for annual charges. The costs described in subsection (b) are estimated by the NRC to be about $270 million in FY 1987.

Subsection (c) requires the NRC to base its annual charges to its licensees on all relevant factors, including the relative costs of regulating different categories of licensees. In the case of nuclear power reactors, charges also are to be based upon the rated capacity of the facility, along with other factors deemed appropriate under subparagraph (A). Charges are to be established by rule.

Subsection (d) requires annual charges to be paid by the end of the fiscal year.

Subsection (e), which restates current law, provides that the amounts collected may be retained and used for the costs of the NRC. It is anticipated that appropriation language will provide the full appropriation for the Commission, and that receipts from the annual charges will offset the appropriation. In this manner, the NRC's spending will not be linked to the collection of fees. This approach has worked successfully at the Federal Energy Regulatory Commission.

Subsection (f) repeals the current statutory authority to collect annual charges.

Section 4101—FERC user fees

Subsection (a) grants FERC the authority to assess and collect annual charges from interstate natural gas pipelines, interstate oil pipeline carriers, and public utilities. This authority is effective beginning in fiscal year 1987. It is the intent of the Committee that FERC assess and collect charges covering its activities from October 1, 1986, although bills for these charges would not be issued until late in the fiscal year. The Committee also intends that FERC implement the new authority through a generic decision or order so that new rate proceedings would not have to be conducted for each company before the new charges are included in rates.

Subsection (b) specifies the methodology FERC is to use to allocate the costs incurred during a fiscal year in administering its jurisdictional statutes, and to assess these costs as annual charges.

For interstate natural gas pipelines, each pipeline's annual charge is to be a proportionate share of FERC's cost of administering all aspects of the Natural Gas Act and the Natural Gas Policy Act of 1978. Each pipeline's proportion is to be calculated by dividing the total volume of natural gas delivered or sold by all interstate natural gas pipelines into the volume of natural gas delivered or sold by the subject pipeline. This fraction is to be multiplied by FERC's costs of administering the Natural Gas Act and the Natural Gas Policy Act in order to determine the pipeline's annual charge.

All volumes of gas either sold or delivered to local distribution utilities for sale or use, as well as all volumes either sold or delivered to consumers for ultimate use, are to be included in the total volume of natural gas for each individual pipeline, as well as the total volume of this calculation for all pipelines. It is intended that pipeline-to-pipeline sales or deliveries not be included in the calculation of volumes. In this way, no volumes will be counted twice. Many of the pipeline companies are familiar with identifying those volumes which should not be counted (to avoid double counting), because they perform this identificatin in determining the volumes which are assessed the funding unit for the Gas Research Institute.

The methodology provided for the assessment of charges on interstate oil pipelines is similar to that for gas pipelines, in that each barrel moved through the interstate oil pipelines would be assessed the same charge as every other barrel moved through the system. Each oil pipeline company's annual charge would be calculated on its proportion of FERC's costs of administering the regulation of oil pipelines under Title 49 U.S.C. (The authority to administer these provisions was transferred to FERC from the Interstate Commerce Commission in the Department of Energy Organization Act of 1977.) Each company's proportion would be calculated by dividing the total barrels of oil subject to FERC's jurisdiction delivered by that company, by the total barrels of oil subject to FERC's jurisdiction delivered by all interstate oil pipelines. This fraction would be multiplied by the total costs to be assessed to all oil pipelines, to obtain the charge to be assessed to the particular company in question.

The assessment of charges on public utilities will equal the adjusted costs of the Commission, as defined in subsection (h). The allocation of charges among the utilities are to be based upon jurisdictional sales.

Subsections (c) through (e) provide that the annual charges authorized to be collected in subsection (b) must be paid by the end of the fiscal year for which they are assessed. The Committee intends in subsection (c) that FERC base its assessments on as close to actual data as possible. That is, the actual operating costs of FERC for a given fiscal year are to be assessed on the basis of actual sales or deliveries for the same period of time. Any billing method that reasonably minimizes FERC and industry administrative costs is acceptable. In subsection (e), FERC is given authority to make adjustments to these estimates, once actual data is available in the next fiscal year, and to make credits to or add obligations to the following fiscal year's assessments, reflecting these adjustments.

Subsection (f) provides that FERC may retain annual charges as collected and use them for carrying out its responsibilities, as well as retaining them until expended. This methodology has been followed in recent fiscal years in appropriating funds for the operation of FERC. Under this approach, the authorization and appropriations committees retain full control over the total costs which FERC can incur in performing its regulatory responsibilities. The appropriation will continue to be an appropriation for the entire FERC budget, and charges and fees may be used to offset the appropriation. The availability of funds to FERC is not to be made contingent upon the collection of such charges.

Subsection (g) provides that FERC shall include annual charges assessed to interstate natural gas pipelines as a uniform (or level) charge on each unit (measured by volume or heat content as determined appropriate by FERC) of gas sold or transported by a pipeline. The Committee expresses no preference on who should ultimately pay the charge. The Committee's only intent is that each unit of gas that is transported through the interstate pipeline system or sold by an interstate pipeline (with adjustments to assure no double imposition of charges) bear the same charge, payable by one of the three beneficiaries of that sale or transportation—the producer, the pipeline, or the purchaser. The Committee determined that this was the most equitable way to assess the costs incurrent by FERC in administering the Natural Gas Act and the Natural Gas Policy Act of 1978.

Subsection (h) provides those costs which shall be included in the total costs to be assessed as annual charges. The Committee assumes that a small portion of the total cost of FERC would not be assessed as annual charges, or fees under the 1952 Act. Excluded will be the costs incurred by the FERC in administering the cogeneration and small power production programs, because the imposition of substantial charges upon small producers would be contrary to policies encouraging the development of these potential sources of energy.

FERC is then to allocate and determine the costs incurred in administering its jurisdictional statutes, broken down into the following areas of responsibility: the administration of the Natural Gas Act and the Natural Gas Policy Act; the regulation of interstate oil pipelines under Title 49 U.S.C.; and, the regulation of public utilities under Parts II and III of the Federal Power Act.

From these three subtotals, FERC is to subtract the fees collected (if any) under the Natural Gas Policy Act that are paid in connection with activities which pertain to each of the programs.

The remaining costs of administering its jurisdictional statutes in each of the three areas are those costs which are to be assessed as annual charges. The remainder of subsection (h) sets forth definitions of an "interstate natural gas pipeline"; a "pipeline carrier"; a "public utility"; and "natural gas sold or transported".

Sections 4201 through 4205—Oil overcharge funds

Subtitle C supplements the restitutionary authorities of the Emergency Petroleum Allocation Act of 1973 and the Economic Stabilization Act of 1973. It makes clear that, except as specifically provided, all overcharge monies, including interest thereon, no matter how collected, are subject to this legislation and are to be held in escrow accounts administered for the DOE by the Secretary of the Treasury. The exceptions are as follows:

(1) amounts actually disbursed before the date of the enactment of this subtitle to any person or governmental entity pursuant to section 155 of Public Law 97-377 or any final judicial or administrative order or judgment (including any settlement agreement or declaratory judgment);

(2) amounts governed by the settlement, approved on July 7, 1986, in *In Re: The Department of Energy Stripper Well Exemption Litigation,* M.D.L. No. 378, in the United States District Court for the District of Kansas; and

(3) amounts designated by judicial or administrative order or judgment (including any settlement or declaratory judgment) for disbursement at any time to any specific person (or class of persons) identified in such order or judgment as injured by the violation or alleged violation of the regulations described in subsection (a)(1).

The Committee does not intend the legislation to expand or reduce in any way the scope of the funds covered by the *Stripper Well* settlement agreement approved by the court.

The legislation requires that all DOE rulings, policies, other statements, including administrative orders and settlement agreements, relative to the disbursement of oil overcharges, in existence or enactment, must be made to conform to this legislation. Similarly, court actions must also conform.

The Committee stresses that the legislation does not change or diminish DOE's present duties and responsibilities to enforce the law and collect overcharges. Indeed, if anything, the Committee expects DOE to move vigorously in this regard and pursue all remaining investigations and all pending judicial and administrative litigation. At the same time, the legislation reaffirms (as does Judge Theis' Order) the primary obligation of the DOE to make direct restitution to overcharged customers. It does not change existing orders, etc., that hold, in some cases, that injured customers are not identifiable. But it specifically directs DOE, acting (as is the case today) through DOE's Office of Hearings and Appeals (OHA) and the DOE's Subpart V regulations, to provide direct restitution to such customers "to the maximum extent possible" through a procedure that allows them to claim such funds. Earlier findings by the OHA in the *Stripper Well* case will be considered in the proceeding applicable to the crude oil funds.

Under the legislation, DOE must determine annually how much crude oil and noncrude oil money must be retained to cover claims in the Subpart V proceedings and how much is excess to that direct restitution need. DOE will use the best available information to make this determination—which information and determination must be public and justified. In making such determination, the Secretary shall give primary consideration to assuring that at all times sufficient funds, including a reasonable reserve, are set aside for making restitution and meeting all commitments.

After complying with this first and paramount priority, and after making this annual determination, the Secretary must promptly provide for the disbursement of a portion or all of such excess to states for use in energy conservation programs. The amount shall be the smaller of—

(A) $256,000,000; or

(B) the amount determined under the provision to be the excess amount for such fiscal year.

After determining the amount to be made available to the States for conservation purposes, the Secretary shall apportion such amount among each of the energy conservation programs in a manner that will provide funding for the fiscal year concerned for each such programs in the same proportionate amount that was provided for each of the programs by the Congress for Fiscal Year 1986. The Secretary will then make available each amount apportioned for use under an energy conservation program to the Governors of the states in the same manner, to the same extent, under the same rulings and regulations, and for the same uses that Federal appropriated funds are available to, and used by, the states under such program. This is consistent with the Court's rulings in the *Exxon* distribution. These conservation programs are defined in the bill to be the same programs listed in the Warner Amendment and for which the *Exxon* oil overcharge funds were disbursed.

The Secretary shall require that amounts available to a state under this legislation are used by the state to supplement, and not supplant, funds otherwise available for energy conservation activities under Federal or state law.

The amount that remains from the excess amount just discussed after all these disbursements have been made for a fiscal year shall be deposited by the Secretary of the Treasury into the general fund of the Treasury as indirect restitution for the benefit of the general public.

The Committee observes that the *Stripper Well* settlement agreement covers monies attributable to the injection well issue that have not yet been paid into the Court's escrow by the refiners. These are called "deficiency funds." As to these funds, the agreement states:

> *Cooperation on Discovery.* The Parties recognize that there are certain remaining unresolved discovery matters in M.D.L. 378. The Refiners agree to cooperate with DOE in resolving these issues as expeditiously as possible and to facilitate the production of documents and answers to interrogatories to the greatest extent possible without waiving any substantive rights or claims of provilege which any Refiner may have.

The legislation requires DOE to report annually, beginning on October 1, 1986, on the status of these efforts. Clearly, the Committee expects this matter to be resolved quickly and properly by all parties. The Committee expects DOE to be vigilant and effective in obtaining all funds properly due.

The legislation also provides that the Secretary shall, in a manner substantially similar to that required by section 155 of Public Law 97-377 with respect to amounts disbursed under such section, monitor the disposition by the states of any funds disbursed to the states by the court pursuant to the opinion and order of such District Court, dated July 7, 1986, with respect to *In Re: The Department of Energy Stripper Well Exemption Litigation,* M.D.L. 378, including the use of such funds for administrative costs and attorneys' fees.

During the Committee's consideration of this legislation, Chairman Dingell and other Members expressed concern about the use of funds by the states as indirect restitution. The agreement provides that oil overcharge funds provided to states shall, after public hearings, "be utilized" for "energy-related programs." The agreement then states:

> State funding of programs shall be limited to (1) those approved by OHA in Subpart V refund proceeding; (2) those referenced in the consent order which DOE entered into in 1981 with Standard Oil Company of California (Chevron) (46 Fed. Reg. 5221; October 26, 1981); (3) the types of energy conservation activities set forth in the following legislation:
>
> (a) Part A of the Energy Conservation and Existing Buildings Act of 1976 (relating to weatherization of buildings; 42 U.S.C. sec. 6861 et. seq.);
>
> (b) Part D of Title III of the Energy Policy and Conservation Act (relating to primary and supplemental State energy conservation programs; 42 U.S.C. sec. 6321 et. seq.);
>
> (c) Part G of Title III of the Energy Policy and Conservation Act (Relating to the energy conservation for schools and hospitals; 42 U.S.C. sec. 6371 et. seq.);

> (d) The National Energy Extension Service and Conservation Act (relating to the promotion of conservation by small businesses and individuals; 42 U.S.C. sec. 7001 et seq.); and
>
> (e) The Low-Income Home Energy Assistance Act of 1981 (relating to assisting the poor with home utility bills; 42 U.S.C. sec. 8621 et. seq.);
>
> and (4) such other restitutionary programs as may be approved by the District Court. Exhibit J exemplifies the programs approved by DOE and referenced above.
>
> As noted by Chairman Dingell, Exhibit J of the Agreement provides a number of examples of DOE approved State Restitutionary programs, such as car care clinics, bicycle promotion programs, highway and bridge maintenance and repair, transit system refitting loan programs, and others that appear somewhat questionable as oil overcharge restitutionary programs. Indeed, we understand that many of these programs have not been approved by the DOE in recent years.

The Committee and the Court (pp. 32–33) expect DOE to monitor these state expenditures carefully as provided in this legislation.

Sections 4301 and 4302—Information and study requirements

Section 4301(a) repeals the requirement in Part E of Title III of EPCA that DOE collect data designed to support DOE's industrial energy conservation program.

In addition, section 4301(b) puts in place, as a statutory requirement, the future triennial collection of data, including fuel switching data, as proposed by EIA for the MECS, to replace the annual survey being abolished and to ensure that sufficient data is available on the energy consumption patterns of the manufacturing sector.

Section 4302 requires the EIA to conduct a study of domestic crude oil production and refining capacity to assist the Congress and the President in determining whether such production and capacity are adequate to protect the national security. The Committee expects EIA to consider all relevant factors including those set forth in 19 U.S.C. 1862(c) as they relate to the domestic production and refining industry. The Committee expects that EIA specifically examine:

> the refined petroleum product needs of the military and other vital government functions under foreseeable national emergencies;
>
> the effect various levels of dependence on imported crude oil and refined petroleum products will have on the nation's foreign policy;
>
> the ability of the United States to resume production from shut-in crude oil and natural gas wells and to restart idled refining capacity;
>
> the adequacy of alternative sources of energy;
>
> the extent to which the decline in exploration, combined with the increase in demand at lower energy prices, is occurring in the rest of the free world;

the geographic diversification of imported supplies available to the United States in 1990;

the projected free world supply-demand balance in 1990;

the current level of private stocks and inventories compared with historic levels;

the likelihood that OPEC will expand its export refinery capacity;

the effect of the economic decline in the oil service and oilfield supply industry on future United States production.

The EIA is required to provide notice and a reasonable opportunity for public comment on the matters within the scope of the investigation directed by this section, taking into account the need for the report within the time period authorized.

The President, based on this EIA analysis, shall determine what levels of imports of crude oil and refined petroleum products would endanger the national security.

Sections 4401 through 4406—Strategic Petroleum Reserve

Section 4401 authorizes appropriations for acquisition of oil for the SPR for fiscal years 1987, 1988, and 1989.

Section 4402 allows, but does not require, the Secretary of Energy to use up to $200 million each year to purchase domestic stripper oil for the SPR. The Secretary may pay up to 10 percent more for the stripper oil than for other oil acquired at market prices for the SPR. A minimum of 75 percent of the stripper oil acquired under this section must be from independent stripper producers. This provision applies only when the average acquisition price for SPR oil is less than $15 per barrel. These prices are all acquisition price for oil delivered to an SPR terminal and are not wellhead, index or other prices.

Section 4403 directs the President to fill the SPR at 100,000 barrels per day until there are 750 million barrels in the SPR. This section also readjusts the Naval Petroleum Reserve (NPR) shut-in linkage to the SPR. Unless the SPR has 600 million barrels of oil or is being filled at an annual average rate of 80,000 barrels per day, NPR production must be reduced to the minimum production levels.

The Committee intends that the SPR be filled at 100,000 barrels per day. The fact that the NPR shut-in trigger is set at a lower rate of 80,000 barrels per day does not imply that this lower rate is the acceptable fill rate. The 80,000 barrel per day rate was selected to avoid a technical violation of the budget resolution relating to budget outlays. The Committee notes that there is sufficient budget authority and SPR capacity to fill at over 100,000 barrels per day for the three fiscal years covered by this authorization at present oil prices of less than $15 per barrel.

Section 4404 requires the inclusion of additional information in the annual report. The Secretary is required to include information covering the future size, location, fill rate, and drawdown plan for the SPR. This information is intended for public review so that states and private energy planners have a comprehensive current statement of the Administration's plans for the SPR. The Committee believes this will assist the states and private sector in developing their own energy contingency plans consistent with the SPR.

The Committee notes that the information required by this section is similar to that required for inclusion in the Strategic Petroleum Reserve Plan required in section 154 of EPCA. However, the SPR Plan has not been updated since 1980 and does not indicate contemporary plans for the SPR.

This section also requires that changes in SPR direction, as well as the fill schedule for the next 12 months, be published in each quarterly SPR report.

The Committee notes that the annual and quarterly reports have been late in transmittal to the Congress. Timely receipt of these reports is extremely helpful in ensuring that the Committee is completely informed on the status of the SPR.

Section 4405 relates to the NPR. Currently, sales of Elk Hills oil is proceeding at prices as low as $4.90 per barrel. The Committee believes that these prices are too low and constitute a loss of revenue to the Government. The reason for this low price is explained in GAO Report RCED-86-163FS to the Subcommittee on Fossil and Synthetic Fuels entitled "Sales Procedures and Prices Received for Elk Hills Oil."

Section 4405 prohibits the sale of NPD oil, including Elk Hills oil, for less than the higher of two prices:

> 90 per cent of the current market value of similar quality oil in California as estimated by the Secretary based on the best information available; or
>
> the price of oil acquired for the SPR under market transactions adjusted for quality differential minus the cost of transportation from the NPR to the SPR.

The price of oil acquired for the SPR is the price for market transactions and not special low or high prices that might be arranged on a government-to-government basis that take into account international political or financial considerations, or prices based on government-to-government barter transactions for other commodities or the stripper production purchased at up to a 10 per cent premium under section 4402.

If no oil is acquired under market transactions then the Secretary should estimate this price based on the best available information.

All SPR oil prices are for oil delivered to an SPR terminal and not wellhead, index, or other prices.

If the Secretary is unable to obtain a price above the two floor prices specified above, he is now allowed, but not required to, reduce NPR production below the Maximum Efficient Recovery rate. Consistent with other provisions of law, the Committee notes that the Secretary has obtains other than reduction of production, including:

exchange of Elk Hills oil for SPR fill

storage of Elk Hills oil in any appropriate storage site including above-ground tanks, tankers, or pipelines

shipment to SPR

transfer to the Department of Defense

When determining whether a sale is potentially above or below these floor prices the determination will be made for each separate bid for the oil so that the lowest bids will be rejected. The Committee recognizes that some companies submit more than one bid for oil.

The Committee also reduced the period of Justice Department review of NPR contracts for antitrust consideration from 30 to 15 days. The Committee was advised that 15 days was consistent with the period the Department actually needed to review the contracts. This action will reduce the length of time between receipt of bids and delivery of the first oil, allowing bidders to reflect more accurately their expectation of market values at the time of delivery.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 or Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ANNUAL REPORTS

SEC. 165. (a) The Secretary shall report to the President and the Congress, not later than one year after the transmittal of the Strategic Petroleum Reserve Plan to Congress and each year thereafter, on all actions taken to implement this part. Such report shall include—

> ⟦(1) a detailed statement of the status of the Strategic Petroleum Reserve;⟧
>
> *(1) a detailed statement of the status of the Strategic Petroleum Reserve, including—*
>
> > *(A) an estimate of the final capacity of the Reserve and the scheduled annual fill rate for achieving such capacity;*
> >
> > *(B) the scheduled monthly fill rate for the 12-month period beginning on the date on which such report is transmitted;*
> >
> > *(C) the type and quality of crude oil to be acquired for the Reserve pursuant to the schedule described in subparagraph (A);*
> >
> > *(D) the schedule of construction of any facilities needed to achieve the final capacity of the Reserve, including a description of the type and location of such facilities and of enhancements and improvements to existing facilities;*
> >
> > *(E) an estimate of the cost of acquiring crude oil and constructing facilities necessary to complete the Reserve;*
> >
> > *(F) a description of the current distribution plan for using the Reserve, including the method of drawdown and distribution to be utilized; and*
> >
> > *(G) an explanation of any changes made in the matters described in subparagraphs (A) through (F) since the transmittal of the previous report under this subsection;*

* * * * * * *

(b)(1) * * *

⟦(2) The first report submitted under paragraph (1) shall include—

[(A) a detailed statement on the planned use of the SPR Petroleum Account as well as other funds available for the Strategic Petroleum Reserve;

[(B) a description of the current Strategic Petroleum Reserve Plan, including any proposed or anticipated amendments to the Plan; and

[(C) detailed plans of the Secretary for acquisition or new construction of storage and related facilities.]

(2) Each of the quarterly reports made under paragraph (1) shall contain a description of—

(A) any change made with respect to the matters described in subparagraphs (A) through (F) of subsection (a)(1) since the last annual report made under such subsection; and

(B) the scheduled monthly fill rate for the Reserve for the 12-month period beginning on the date on which such quarterly report is transmitted.

* * * * * * *

TITLE III—IMPROVING ENERGY EFFICIENCY

* * * * * * *

[PART E—INDUSTRIAL ENERGY CONSERVATION

DEFINITIONS

[SEC. 371. As used in this part—

[(1) The term "chief executive officer" means, within a corporation, the individual whom the Secretary determines, for purposes of this part, is in charge of operations.

[(2) The term "corporation" means a person as defined in section 3(2)(B) and includes any person so defined which controls, is controlled by, or is under common control with such person. If a corporation is engaged in more than one major energy-consuming industry, such corporation shall be treated as a separate corporation with respect to each such industry.

[(3) The term "energy efficiency" means the amount of industrial output or activity per unit of energy consumed therein, as determined by the Secretary.

[(4) The term "major energy-consuming industry" means a two-digit classification, within the manufacturing division of economic activity set forth in the Standard Industrial Classification (SIC) Manual by a code number, which the Secretary determines is suited to the purposes of this part.

[(5) The term "plant" means an economic unit at a single physical location where industrial processes are performed, as determined by the Secretary, and may be referred to as a factory, a mill, or an establishment.

[(6) The term "United States" means each of the several States, the District of Columbia, the commonwealth of Puerto Rico, and any territory or possession of the United States.

[SEC. 372. The Secretary shall establish and maintain, in consultation with the Secretary of Commerce and the Administrator of the Energy Research and Development Administration, a program—

⟦(1) to promote increased energy efficiency by American industry, and

⟦(2) to establish voluntary energy efficiency improvement targets for at least the 10 most energy-consumptive major energy-consuming industries.

⟦IDENTIFICATION OF MAJOR ENERGY CONSUMERS

⟦SEC. 373. (a) Within 90 days after the date of enactment of this Act, the Secretary shall identify each major energy-consuming industry in the United States, and shall establish a priority ranking of such industries on the basis of their respective total annual energy consumption.

⟦(b) Within 90 days after the date of the enactment of this subsection, the Secretary shall identify each corporation which consumes at least one trillion British thermal units of energy per year and which is within a major energy-consuming industry identified under subsection (a).

⟦INDIVIDUAL ENERGY EFFICIENCY IMPROVEMENT TARGETS

⟦SEC. 374. (a) Within one year after the date of enactment of this Act, the Secretary shall set an industrial energy efficiency improvement target for each of the 10 most energy-consumptive industries identified under section 373. Each such target—

⟦(1) shall be based upon the best available information,

⟦(2) shall be established at the level which represents the maximum feasible improvement in energy efficiency which such industry can achieve by January 1, 1980, and

⟦(3) shall be published in the Federal Register, together with a statement of the basis and justification for each such target.

⟦(b) In determining maximum feasible improvement under subsection (a) and under subsection (c), the Secretary shall consider—

⟦(1) the objectives of the program established under section 372,

⟦(2) the technological feasibility and economic practicability of utilizing alternative operating procedures and more energy efficient technologies,

⟦(3) any special circumstances or characteristics of the industry for which the target is being set, and

⟦(4) any actions planned or implemented by each such industry to reduce consumption by such industry of petroleum products and natural gas.

⟦(c) The Secretary may, in order to carry out sectin 372(1), set an industrial energy efficiency improvement target for any major energy-consuming industry to which subsection (a) does not apply. Each such target—

⟦(1) shall be based upon the best available information,

⟦(2) shall be established at the level which represents the maximum feasible improvement in energy efficiency which such industry can achieve by January 1, 1980, and

⟦(3) shall be published in the Federal Register, together with a statement of the basis and justification for each such target.

[(d) Any target established under subsection (a) or (c) may be modified at any time if the Secretary—

[(1) determines that such target cannot reasonably be attained, or could reasonably be made more stringent, and

[(2) publishes such determination in the Federal Register, together with a statement of the basis and justification for such modification.

[TARGETS FOR USE OF RECOVERED MATERIALS

[SEC. 374A. (a) For purposes of this section, the term "energy-saving recovered materials" means aluminum, copper, lead, zinc, iron, steel, paper and allied paper products, textiles, and rubber, recovered from solid waste, as defined in the Solid Waste Disposal Act.

[(b) Within one year after the date of the enactment of this section, the Secretary shall set targets for increased utilization of energy-saving recovered materials for each of the following industries: the metals and metal products and industries, the paper and allied products industries, the textile mill products industry, and the rubber industry. Such targets—

[(1) shall be based on the best available information,

[(2) shall be established at levels which represent the maximum feasible increase in utilization of energy-saving recovered materials each such industry can achieve progressively by January 1, 1987, and

[(3) shall be published in the Federal Register, together with a statement of the basis and justification for such targets.

[(c) In establishing targets under subsection (b), the Secretary shall consult with the Administrator of the Environmental Protection Agency and with each of the major industries subject to this section, and shall consider—

[(1) the technological and economic ability of each such industry progressively to increase its utilization of energy-saving recovered materials by January 1, 1987, and

[(2) all actions taken or which before such date could be taken by each such industry, or by Federal, State, or local governments to increase that industry's utilization of energy-saving recovered materials.

[(d) Any target established under subsection (b) may be modified if the Secretary—

[(1) determines that such target cannot reasonably be attained, or that it should require greater use of energy-saving recovered materials, and

[(2) publishes such determination in the Federal Register, together with a basis and justification for such modification.

[(e) Within each of the industries subject to this section, the Secretary shall notify each corporation which is a major energy consumer (within the meaning of section 373) of the requirements of this section. Not later than January 1, 1979, the chief executive officer of each such corporation (or individual designated by such officer) shall include in his report to the Secretary under section 375, or if section 376(g) applies, prepare and transmit a report which includes a statement of the volume of energy-saving recovered materials that such corporation is using in each of its manufacturing operations located in the United States and what plans, if any, the corporation has to increase the utilization of such materials in those operations located in each of the next ten years. Not later than January 1, 1980, and annually thereafter, each such corporation shall include in such report a statement of the progress it has made to increase its utilization of energy-saving recovered materials to reach targets established under this section by the Secretary for its industry. Such reports shall contain such information as the Secretary determines is necessary to measure progress toward meeting the industry targets established under this section.

⟦(f) The Secretary shall include in his annual report under section 375(e) a report on the industrial energy and natural resource conservation and recovery program established under this section. Each such report shall include—

⟦(1) a summary of the progress made toward the achievement of targets set by the Secretary under this section; and

⟦(2) a summary of the progress made toward meeting such targets since the date of publication of the previous report, if any.

⟦REPORTS

⟦SEC. 375. (a) The chief executive officer (or individual designated by such officer) of each corporation which is identified by the Secretary pursuant to section 373 shall report to the Secretary on an annual basis (as determined by the Secretary) on the progress such corporation has made in improving its energy efficiency. Such report shall contain such information as the Secretary determines is necessary to measure progress toward meeting the energy efficiency improvement target set for the industry of which such corporation is a part, except that the Secretary shall not require such report if such corporation is in an industry which has an adequate voluntary reporting program (as defined by section 376(g)).

⟦(b) Each report to the Secretary under subsection (a) shall include data aggregated to SIC codes from plant reporting forms in a manner to be determined by the Secretary.

⟦(c) Each plant shall periodically file a plant reporting form with its corporation at the corporation's headquarters within the United States. Each plant reporting form will be retained by the plant's corporation at its headquarters for at least 5 years. Such forms will be made available to the Secretary for verification purposes upon request, but information from forms made so available shall not be released to the public.

⟦(d) The Secretary shall prepare, publish, and make available for use in complying with the reporting requirements under subsections (a) and (c), forms which shall be designed in such a way as to avoid imposing on any corporation which is required to submit reports under subsection (a) an undue burden with respect to the corporation or any plant of such corporation.

⟦(e) The Secretary shall prepare and submit to the Congress and to the President, and shall cause to be published, an annual report on the industrial energy efficiency program established under section 372. Each such report shall include—

[(1) a summary of the progress made toward the achievement of the industrial energy efficiency improvement targets set by the Secretary,

[(2) a summary of the progress made toward meeting such industrial energy efficiency improvement targets since the date of publication of the previous such report, if any, and

[(3) recommendations to the Congress as to how additional improvements might be achieved.

[GENERAL PROVISIONS

[SEC. 376. (a) The district courts of the United States shall have jurisdiction, upon petition, to issue an order to the chief executive officer of any corporation subject to the reporting requirements of section 375(a), requiring such person to comply forthwith. Failure to obey such an order shall be treated by any such court as a contempt thereof.

[(b) In addition to the exercise of authority under this part, the Secretary may exercise any authority he has under any provision of law (other than this part) to obtain such information with respect to industrial energy efficiency and industrial energy conservation as is necessary or appropriate to the attainment of the objectives of the program established under section 372 or 374A.

[(c) The Secretary shall afford interested persons an opportunity to submit written and oral data, views, and arguments prior to the establishment of any industrial energy efficiency improvement target under section 374 or any target under section 374A and prior to publication of any reporting requirements under section 375.

[(d) Any information submitted by a corporation to the Secretary under this part shall not be considered energy information, as defined by section 11(e)(1) of the Energy Supply and Environmental Coordination Act of 1974, for purposes of any verification examination authorized to be conducted by the Comptroller General under section 501 of this Act.

[(e) The Secretary may not disclose any information obtained under this part which is a trade secret or other matter described in section 552(b)(4) of title 5, United States Code, disclosure of which may cause significant competitive damage; except to committees of Congress upon request of such committees. Prior to disclosing any information described in such section 552(b)(4), the Secretary shall afford the person who provided such information an opportunity to comment on the proposed disclosure.

[(f) No liability shall attach, and no civil or criminal penalties may be imposed for any failure to meet any individual energy efficiency improvement target established under section 374 or any target under section 374A of this Act.

[(g)(1) The Secretary shall exempt a corporation from the requirements of section 375(a) if such corporation is in an industry which has an adequate voluntary reporting program, as determined by the Secretary annually after notice and opportunity for interested persons to comment. An industry's voluntary reporting program shall be determined to be adequate only if—

[(A) each corporation within such industry which is identified under section 373 fully participates in such program;

[(B) all information deemed necessary by the Secretary for purposes of evaluating the progress made by such industry in achieving the industry energy efficiency improvement target set forth under section 374 is provided to the Secretary; and

[(C) reports made to a trade association or other person, in connection with such program, are retained for a reasonable period of time and are available to the Secretary.

[(2) If the Secretary determines that an industry's voluntary reporting program is not adequate solely on the basis that any corporation within such industry is not fully participating in such program, he shall exempt from the requirements of section 375(a) only those corporations which fully participate in such program.

[(h) Nothing in this part shall limit the authority of the Secretary to require reports of energy information under any other law.]

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REPORT TO ACCOMPANY RECOMMENDATIONS FROM THE COMMITTEE ON ENERGY AND COMMERCE (HEALTH MATTERS)

Medicare, Medicaid, and Maternal and Child Health Budget Reconciliation Amendments of 1986

PURPOSE AND SUMMARY

The purpose of the amendments reported by the Committee is to achieve net expenditure reductions in Part B of the Medicare program, which in combination with changes recommended by the Committee on Ways and Means in Part A of the Medicare program, will achieve the reconciliation targets established in the Concurrent Budget Resolution for FY 1987, S. Con. Res. 120; and to provide legislative authority to achieve certain program improvements in the Medicaid and Maternal and Child Health programs which were specified in the Budget Resolution.

BACKGROUND AND NEED FOR LEGISLATION

The Concurrent Resolution on the Budget for FY 1987 provided for a reduction in Medicare expenditures in Parts A and B of the program of $550 million in FY 1987, and $3.3 billion over the next three fiscal years. The House Resolution specified that these program savings were to be achieved in a manner which did not increase costs to, or reduce services for, program beneficiaries. The Budget also made provision for increased funds in Medicare of $250 million in FY 1987 and $1 billion over the next three fiscal years to moderate increases in the Medicare hospital deductible.

Jurisdiction over the Medicare program is shared between the Committees on Ways and Means (Parts A and B of Medicare) and Energy and Commerce (Part B of Medicare). The reconciliation instruction for expenditure reduction is assigned in full to both Committees with the understanding that the combined actions of both Committees will determine if the reconciliation target is met. The amendments considered by the Energy and Commerce Committee are designed to make improvements in the Medicare program, to protect the beneficiary against increased costs or reductions in services, and to achieve sufficient net reductions in part B expenditures that, when combined with the effect of the actions of the Ways and Means Committee, the reconciliation instruction for the Medicare program are met.

Further, the Budget Resolution contained funds for increased services under the Maternal and Child Health Services Block Grant found in Title V of the Social Security Act and for specified improvements in the Medicaid program which would allow aged and disabled persons below the poverty line, and poor pregnant women and infants up to age 1, to have access to Medicaid services at State option. In addition, the Resolution provided funds to hold States harmless in FY 1987 for loss of funds resulting from changes in the matching formula for Medicaid which were adopted as part of the Consolidated Omnibus Budget Reconciliation Act, P.L. 99-272, enacted earlier this year. The amendments considered by the Committee were in response to these specific initiatives included in the budget.

An explanation of the amendments to existing law recommended by the Committee follows:

SUBTITLE F—MEDICARE

Provisions Relating to Parts A and B

Direct costs of graduate medical education (Sec. 4501)

Section 9202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") restructured the manner in which Medicare reimburses teaching hospitals for the direct costs they incur for graduate medical education. Effective with cost reporting periods beginning on or after July 1, 1985, hospitals are to receive payment on the basis of a formula that takes into account each hospital's previous average cost per full-time equivalent resident, the number of full-time equivalent residents during the period for which reimbursement is being made, and the hospital's proportion of total inpatient days used by Medicare patients during that period. Beginning on July 1, 1986, distinctions are made among residents, for purposes of counting their full-time equivalency in this formula, and different weighting factors are applied depending on how many years of residency training they have completed. Residents are weighted at 1.00 during the period needed to obtain their first board eligibility, plus one additional year, not to exceed a total of five years. As a practical matter, this results in full payments for either four or five years. After that period of residency, payments are reduced. Beginning on July 1, 1987 payments for such residents are reduced to 50% of what they would otherwise have been.

Section 4501 of the Committee bill makes two changes in these new rules, with respect to how residents are counted towards full-time equivalency. These two changes are designed to enhance the incentives for training in primary care. The first change relates to the patient care settings in which the resident may be located and counted towards full-time equivalency; the second relates to the weighting factor used during the fifth year of residency.

Under current Medicare regulations, a resident's time spent in an ambulatory setting is counted towards full-time equivalency only if the setting is, organizationally, part of the hospital where the resident's training program is located. If the resident is assigned to a free-standing setting, such as a family practice center or clinic or a free-standing ambulatory surgery center, no Medicare payments are allowed for the time spent there. Since it is difficult to find sufficient other sources of funding for the costs of such training, assignments to these settings are discouraged. It is the Committee's view that training in these settings is desirable, because of the growing trend to treat more patients out of the inpatient hospital setting and because of the encouragement it gives to primary care.

The Committee bill would change the current regulations by providing that all of the time that a resident spends in activities related to patient care is to be counted towards full-time equivalency, without regard to the setting in which those activities take place, so long as the hospital is incurring costs for that resident's training. Payments would continue to be made only to the hospital; they would not be made directly to independent, free-standing units. Such units would have to have a financial arrangement with the teaching hospital, under which the hospital incurs costs for such items as the resident's salary or stipend, the faculty, supervisors or administrators of the residency program, or the other items that are presently included under direct medical education costs.

The Committee bill would also change the weighting factors used to compute full-time equivalency. Beginning on July 1, 1987, residents in the fifth year of their training who are weighted at 1.00 under the current law would be given a reduced weighting factor. The twelve month period beginning July 1, 1987, would be a transition year during which such residents would be given a weighting factor of 0.75. Beginning on July 1, 1988, and thereafter, such residents would be given a weighting factor of 0.50, which is the same as that given to other residents in the fifth, sixth, and succeeding years.

As was discussed in the Committee's report on the structural changes made in COBRA (H. Rept. 99-265, Part 1, pp. 66-73), primary care training programs have more difficulty obtaining resources than other programs, and they are more vulnerable to the cost-cutting measures currently being employed throughout the health care sector. As a result, opportunities for primary care training might be curtailed, for reasons having nothing to do with the training and career interests of residents or with the relative scarcity or surplus of particular specialties and subspecialties. The two changes in the Committee bill are designed to reinforce and enhance the objectives of the changes made by COBRA.

Cost limits for home health agency services (Sec. 4502)

Under regulations published by the Secretary on July 5, 1985, the methodology for calculating home health cost limits was revised, effective July 1, 1985, to require that such limits be applied on a discipline-specific basis. Prior to that time, separate limits were established for each type of service provided, but they were applied in the aggregate to each home health agency based on a mix of services.

The Committee bill would restore the methodology for determining home health cost limits to that which was in place prior the publication of the July 5, 1985 regulations. Under the bill, cost limitations would have to be applied on an aggregate basis for all home health services furnished by an agency, rather than on a discipline-specific basis. The Secretary would be precluded from applying limits separately for each type of home health service provided and would be required to allow agencies to aggregate these limits and apply them to aggregated costs. The bill would also require that the Secretary provide for an adjustment to these limits as they apply to hospital-based agencies so as to account for the higher administrative costs that are incurred by such agencies.

In addition to reinstating the methodology for the application of home health cost limits, the Committee bill would require the Secretary to base such limits on the most recent data that are available. However, these data could not include information from cost reporting periods beginning before October 1, 1983. That is the date that the new Medicare prospective payment system for hospitals began to be implemented, and began to affect the needs of patients being served by home health agencies. The Secretary would also be required to take into account the changes in costs of home health agencies in billing and verification procedures that may result from the Secretary's changing or modifying the requirements for such procedures, to the extent the changes in costs are not reflected in the data.

Under the Committee bill, the Comptroller General is required to report to Congress by April 1, 1987 on the appropriateness and impact on Medicare beneficiaries of applying cost limits on a discipline-specific basis rather than on an aggregate basis for all home health services provided by an agency, as well as on the appropriateness of the percentage limits for such services as established by the Secretary.

Research on patient outcomes (Sec. 4503)

A growing body of research on the utilization of medical services has shown there to be extraordinary variations in the scope of care furnished to otherwise comparable populations. This is true for the general population and for Medicare enrollees, in particular. Such research raises questions that have an important bearing on policy decisions affecting the Medicare program. These include questions about the quality of care, the appropriateness of care, and the cost-effectiveness of care being received by Medicare enrollees and the effects of the payment methodologies and quality assurance measures currently employed.

The existing research raises such questions in a direct and forceful manner, but does not provide answers. We now know that hospital admissions or surgical rates for certain diagnoses, and average per capita expenditures for health care, vary by multiples of two, three, or four, from one community to another. However, we do not know the causes for such variations, what the effects of such variations are on patient outcomes, or what the proper rates of utilization should be. Many procedures in common use have not been rigorously evaluated, and there is not a general consensus on the proper criteria and measures of quality and patient outcome. Individual physicians, each acting in good faith, in the best interests of the patient, and on the best information and knowledge available to them, can arrive at widely divergent conclusions about the best course of treatment. Such differences can result in vastly different effects on the quality, outcome, and costs of care.

The Committee bill requires the Secretary to conduct research on patient outcomes and selected medical treatments and procedures, for the purpose of improving our ability to address these issues in an informed manner. Funding is provided from the Part A and Part B trust funds, to be used for grants and cooperative agreements with the research community. The program would be administered by the National Center for Health Services Research and Health Care Technology, under the Assistant Secretary for Health. In administering the program, the National Center would be required to consult with the Center for Health Care Technology recently established, with Federal matching funds, under the auspices of the Institute of Medicine. Priorities and objectives for the research program are further identified in the provision.

Methodologically sound research on these policy-relevant, unanswered questions will be of tremendous assistance as the Committee reviews proposals for further modifications and refinements in the Medicare program. The Committee is concerned that a continuation of recent cost-saving measures, such as freezes or across-the-board reductions in payments for hospital, physician and other services, will have an adverse effect on the accessibility and quality of care needed by Medicare enrollees. It is the Committee's view that significant savings might be achievable in the future, without such adverse effects, if our efforts are grounded on rigorous research of the type called for in this provision.

Treatment of group purchasing vendor agreements (Sec. 4504)

Under current law, it is a felony to pay any remuneration, including any kickback, bribe, or rebate, with the intent of inducing or arranging for the referral of Medicare or Medicaid business. Sections 1877(b) and 1909(b) of the Act make conviction for such conduct punishable by a fine of up to $25,000 and imprisonment of up to 5 years, or both.

Group purchasing organizations (GPO's) purchase goods and services for participating hospitals and other institutions at costs below those which the members would be able to obtain individually. To cover costs, GPO's either charge administrative fees to member institutions, or they require vendors from whom they purchase services or supplies to pay them a fixed percentage of the value of the business that they refer to the vendors. The Inspector General of the Department of Health and Services has determined that this latter arrangement—the vendor-paid fee—represents a "technical" violation of the anti-kickback provisions. In the IG's view, both the vendor who agrees to such a condition and a GPO who solicits such an agreement are violating the law. The IG does not consider these payments exempt from criminal liability as "discounts" under sections 1877(b) and 1909(b) of the Act because they are not reductions in price, the value of which are passed on to the purchaser. Under group purchasing agreements, the amount paid by the vendor to the agent may not be passed along to the hospitals.

Pending Congressional clarification on this point, the IG requested that the Justice Department announce it would refrain from prosecuting such arrangements, but the Department, by letter dated October 30, 1985, declined, arguing that "this would be tantamount to saying that conduct which Congress in its wisdom has made a crime is not a crime." It is clear tht Congressional action is warranted.

The Committee believes that GPO's can help reduce health care costs for the government and the private sector alike by enabling a group of purchasers to obtain substantial volume discounts on the prices they are charged. The Committee understands that the amount of the price reductions exceeds the fees the vendors must pay the GPO's. The Committee can see no justification for prohibiting such cost-saving arrangements, and believes that the uncertainty resulting from the Justice Department's position on this issue should be eliminated.

The Committee bill therefore creates an exception to the anti-kickback provisions for amounts paid by vendors of goods and services to authorized purchasing agents for groups of hospitals, nursing homes, or other entities receiving Medicare and Medicaid reimbursement, if the following conditions are met. First, the purchasing agent must have a written contract with each vendor and with each Medicare or Medicaid provider or practitioner in the group specifying the amount paid to the agent. The amount may be either a fixed sum or a fixed percentage (not to exceed 3 percent) of the value of the purchase made by each practitioner or provider under the contract. Second, the purchasing agent must disclose to each practitioner or provider in the group the amount received from each vendor with respect to that individual's or entities purchases. These limitations are intended to assure that only reasonable and above-board vendor-paid GPO fee arrangements receive the protection of this exclusion.

The purpose of this provision is to assure GPO's and the vendors who contract with them, that they do not risk prosecution as a result of the fees the GPO's collection from the vendors. The provision is therefore effective with respect to payments made before, on, or after enactment.

Improvements in civil monetary penalty and exclusion provisions (Sec. 4505)

Under current law, practitioners and institutions who present false or certain other improper claims or requests for reimbursement under the Medicare, Medicaid, or Maternal and Child Health Services programs are, in addition to potential criminal penalties, subject to civil monetary penalties of up to $2,000 for each item or service and, in lieu of damages an assessment of up to twice the amount claimed. Civil money penalty proceedings are prosecuted by the Inspector General of HHS before an administrative law judge; providers may appeal adverse determinations to the appropriate U.S. Circuit Court of Appeals. In addition, individuals who have been convicted of criminal offenses related to their participation in Medicare or Medicaid are subject to exclusion from both programs; these individuals are entitled to an administrative hearing and, if the agency upholds the IG's decision to exclude, judicial review.

The Committee bill makes three improvements in these authorities that are intended to increase the efficiency of these proceedings. First, the bill expands the application of the doctrine of collateral estoppel in civil monetary penalties cases. Under this doctrine, a person who is convicted of a criminal offense after a trial, by virtue of a plea of guilty, cannot relitigate the essential elements of the criminal offense in a subsequent civil case, including a civil monetary penalties case. The doctrine is based on the principle that it is wasteful to relitigate issues which have already been resolved in another proceeding. The Committee does not intend to narrow the application of the collateral estopped doctrine in any respect, and intends to expand its application in one respect, by allowing its application where an individual has entered a plea of nolo contendere in a Federal criminal prosecution. It is as wasteful of the IG's limited resources to relitigate the essential elements of a criminal offense when the defendant as entered a nolo plea as when the defendant has plead guilty. The Committee intends that application of the doctrine of collateral estoppel in this manner should govern civil monetary penalty proceedings notwithstanding any other provision of Federal law with respect to such pleas.

Second, the Committee bill provides administrative law judges in civil monetary penalties proceedings the authority to impose limited sanctions on any party or attorney for failure to comply with lawful orders, for failing to defend an action, or for other misconduct that would interfere with the speedy, orderly, or fair conduct of the hearing. It is the understanding of the Committee that, in some civil monetary penalties cases, parties or their attorneys have failed to comply with discovery orders, time deadlines, and other lawful orders of the administrative law judge, who under current law lacks the authority to sanction such misconduct effectively. The Committee bill provides administrative law judges in such circumstances with a range of sanctions, such as the drawing of negative factual inferences from the failure to allow discovery, striking pleadings or defenses, staying the proceedings, dismissing the action, entering a default judgment, ordering the party or attorney to pay the cost caused by the misconduct, or refusing to consider any document not filed on time. Any sanction imposed must be reasonably related to the severity and nature of the misconduct. The imposition of any such sanction is, of course, subject to appeal in conjuction with any appeal of the decision on the merits of the case to the U.S. Circuit Court of Appeals.

Finally, the Committee bill defines the term "convicted" for purposes of the exclusion of individuals convicted of program-related criminal offenses under section 1128(a) of the Act. An individual is considered to have been convicted of a criminal offense when (1) a judgment of conviction has been entered in a local, State, or Federal Court, regardless of whether there is an appeal pending or whether the judgment or other record of conviction has been expunged; (2) there has been a finding of guilt by a Federal, State, or local court; (3) a plea of guilty or nolo contendere has been accepted by a Federal, State, or local court; or (4) the individual has entered into participation in a first offender, deferred adjudication, or other program where judgment of conviction has been withheld.

With respect to convictions that are "expunged," the Committee intends to include all instances of conviction which are removed from the criminal record of an individual for any reason other than the vacating of the conviction itself, e.g., a conviction which is vacated on appeal. The Committee wishes to emphasize that, if a conviction is overturned or vacated on appeal, the individual can no longer be excluded from the Medicare and Medicaid programs (unless, of course, he or she has been excluded on grounds independent of such conviction).

According to the Office of the Inspector General, about 10 percent of the criminal dispositions of cases of criminal abuse against Medicare or Medicaid cannot be the basis for an exclusion under current law. In FY 1985, of 447 criminal dispositions obtained by the State Medicaid fraud control units, 49 convictions were found to be outside the scope of section 1128(a); accordingly, there was no Federal exclusion from Medicare or Medicaid in these cases.

The principal criminal dispositions to which the exclusion remedy does not apply are the "first offender" or "deferred adjudication" dispositions. It is the Committee's understanding that States are increasingly opting to dispose of criminal cases through such programs, where judgment of conviction is withheld. The Committee is informed that State first offender or deferred adjudication programs typically consist of a procedure whereby an individual pleads guilty or nolo contendere to criminal charges, but the court withholds the actual entry of a judgment of conviction against them and instead imposes certain conditions of probation, such as community service or a given number of months of good behavior. If the individual successfully complies with these terms, the case is dismissed entirely without a judgment of conviction ever being entered.

These criminal dispositions may well represent rational criminal justice policy. The Committee is concerned, however, that individuals who have entered guilty or nolo pleas to criminal charges of defrauding the Medicaid program are not subject to exclusion from either Medicare or Medicaid. These individuals have admitted that they engaged in criminal abuse against a Federal health program and, in the view of the Committee, they should be subject to exclusion. If the financial integrity of Medicare and Medicaid is to be protected, the programs must have the prerogative not to do business with those who have pleaded to charges of criminal abuse against them.

Payment for ESRD services (Sec. 4506)

Under special eligibility provisions enacted in 1972, virtually everyone who is diagnosed as having end-stage renal disease is eligible to enroll in Medicare, irrespective of age or disability status. Specific services covered for such enrollees include dialysis service and transplants, as well as hospital and physician services. Special payment methodologies have been instituted for dialysis and physician services, which are designed to provide incentives for home dialysis and promote the most cost-effective mode of treatment.

Dialysis services are paid on the basis of a prospectively determined, composite rate per treatment, that is weighted to take into account the mix of home and out-patient facility patients and the relative costs of those two settings. Separate rates are set for hospital-based and for free-standing facilities. These rates were first established by regulations published by the Health Care Financing Administration on May 11, 1983, and have remained in effect without change since that date. On may 13, 1986, HCFA published a proposed notice, setting forth its intent to change the methodology by which such rates are calculated, as well as apply more recent data in calculating the rates. Under HCFA's proposed changes, the base rate for free-standing dialysis facilities would be decreased from $122.91 per treatment to $113.47, and the base rate for hospital-based facilities would be decreased from $126.76 to 117.89.

Considerable concern has been expressed by patients, physicians, dialysis facilities and others about the effect that such a decrease will have on the quality and access of dialysis services. Although the Committee recognizes that cost-saving changes in technology and dialysis practices, as well as increases in the proportion of patients dialyzing at home, have probably reduced the costs of dialysis, the Committee is concerned that reductions of the magnitude proposed by HCFA may have an adverse effect on patients. Information does not exist at this time to resolve this concern conclusively.

The Committee bill would authorize the Secretary to reduce the composite rates, but not below a base rate of $117.50 for free-standing facilities and $121.50 for hospital-based facilities. The bill also requires the Secretary to arrange for in independent study of the effects of any reductions in these rates and to report the findings to Congress by January 1, 1988. It is the Committee's intention that the study be conducted by the Institute of Medicine, if that body is willing to do it.

The Committee bill would also amend the statute to require prompter consideration of requests for exceptions from these dialysis rates. The statute currently requires the Secretary to provide for additional payments to dialysis facilities that cannot avoid incurring costs greater than the composite rates, due to unusual circumstances. The Secretary is to give special consideration to sole facilities located in isolated, rural areas. Numerous complaints have been received, however, that the exceptions process is cumbersome, that the rules are ambiguous and difficult to comply with, and that determinations are long delayed. Essential isolated facilities and pediatric facilities, which also have special needs, have been particularly affected.

To resolve this concern, the bill includes a provision that would add pediatric facilities to those warranting special consideration and require that exceptions be resolved within 45 working days after being filed. If an exception were not resolved at that time, it would be deemed to be approved. It is the Committee's intent that HCFA clarify the requirements that an essential isolated facility or a pediatric facility must meet in order to receive an exception and that the process be simplified and expedited for these applicants. It is the Committee's expectation that, if this is done, applications for exceptions will not have to be returned to the applicant for failure to provide the necessary information and documentation for an exception.

Under current law, payments for routine physician services are made on the basis of a monthly capitation payment ("MCP"). This concept has been used to compensate physicians since 1974, with the current methodology established by HCFA in regulations published on May 11, 1983. The rates originally put into effect in 1974 were increased marginally in 1978, but were significantly reduced when the current methodology was adopted in 1983. On July 2, 1986, HCFA revised the current methodology, to be effective August 1, 1986, which would have the effect of reducing the MCP, on average, from $187.88 to $173.07.

As was the case with HCFA's proposed reductions in dialysis rates, this reduction in the MCP has been criticized by patients, physicians, and others, for being too large and having an adverse impact on the care furnished ESRD patients. As before, the Committee shares this concern and has very little information on which to draw a conclusion as to what is the most appropriate level of payment and what the effects will be of the proposed reduction. The bill would permit the Secretary to reduce the MCP, so long as it is done in a manner that the average payment was not less than $180. The bill also incorporates the effects of MCP reductions in the study described above, to be done by the Institute of Medicine.

The Committee bill also includes Medicare coverage of immunosuppressive drugs for enrollees who receive an organ transplant that is covered under Medicare, which at this time would include kidney and heart transplants. The period of coverage is limited to one year following the transplant operation. (If a Medicare enrollee were to require a second transplant, coverage for these immunosuppressants would extend to the second transplant, for a period of one year following the second transplant.) Payment would be made under Part B on a reasonable charge basis, subject to the standard deductible, coinsurance, and other features of the reasonable charge methodology. It is the Committee's expectation that transplant centers will facilitate the patient's obtaining and billing for these drugs.

The Committee sought to provide Federal payments for immunosuppressive drugs two years ago, when reporting the National Organ Transplant Act. The Committee concluded that it was not sound policy for Medicare to pay for an expensive transplant procedure, but not pay for the drugs that are essential for the transplant to be a success. (See H. Rept. 98-769, pp. 12-14.) In conference, it was agreed instead to have the Task Force on Organ Transplantation review and make recommendations on this issue. The Task Force did so, and recommended unequivocally that Federal funds be used to provide these drugs. (See Report to the Secretary and the Congress on Immunosuppressive Therapies, October 1985.)

The Committee has concluded that, in light of the demonstrated need for, and special circumstances regarding, these drugs, we should not continue to withhold Medicare payments on the grounds that Medicare does not otherwise pay for self-administered, outpatient drugs.

Improvements in ESRD networks (Sec. 4507)

The End-Stage renal disease networks are organizations formed to promote access and quality in dialysis services. There are currently 32 such networks. These networks have performed a variety of functions, including obtaining and validating data on dialysis and transplant patients, resolving patient grievances about the services they are receiving from dialysis facilities, and working with dialysis facilities, physicians and patients to monitor and improve the quality of care and promote the most appropriate mode and setting for dialysis services for each patient.

On April 15, 1986, the Health Care Financing Administration published a proposed rule in the Federal Register, which would revamp the current network organizations. In addition to reducing the number of networks to 14, HCFA proposed to change from a grant arrangement to competitively bid contracts. The proposal would have removed most of the requirements regarding network duties and responsibilities from the regulations, in order to have the flexibility to define and negotiate these issues during the contracting process.

The HCFA proposal has been severely criticized by patients, physicians, and dialysis facilities, because of their concerns that it will result in the elimination or diminution of the vital functions currently performed by networks. These groups also express the view that a reduction to 14 networks will result in geographical areas that are too great to allow for the effective performance of network functions.

In response to these concerns, the Committee bill would preclude HCFA from carrying out its proposal. Further, the bill would amend the current statute to strengthen the networks' legislative mandate to perform the data collection, patient grievance, and quality assurance functions now performed and to place greater emphasis on vocational rehabilitation of dialysis patients. The bill would require the Secretary to follow specified procedures in making changes in the networks, would allow consolidation of existing network areas to no fewer than 17, and would provide that existing network organizations, or combinations of existing network organizations, are to be given the first opportunity to perform the network functions in a newly designated area. Beginning on January 1, 1987, networks would be funded by HCFA taking 50 cents from the payment that would otherwise be made to a dialysis facility for dialysis services under the prospective, composite rate payment method. This would replace the current method of funding from the Medicare trust funds, subject to a specific appropriation.

The bill would also require the Secretary to establish a national end-stage disease registry, for the purpose of collecting uniform and comprehensive data on all dialysis and transplant patients. The Secretary would be responsible for analyzing such data, making it available (in such a manner as to protect the confidentiality of individual patients) for others to conduct research and analyses, and making an annual report to the Congress on the status and recent developments in the ESRD program. It is the Committee's intent that the requirements established in this provision be followed by the Secretary in carrying out the requirements for a scientific registry established in title II of the National Organ Transplant Act (section 373 of the Public Health Service Act).

Improvements in organ procurement activities (Sec. 4508)

The Task Force on Organ Transplantation, created by the National Organ Transplant Act of 1984 (P.L. 98-507), conducted a comprehensive examination of all aspects of organ procurement and transplantation. In addition to many other findings and specific recommendations, the Task Force concluded that an overriding problem, common to all organ transplant procedures, is the serious gap between the need for organs and the supply of organs available for transplantation. The Task Force found that many opportunities for obtaining organs were lost because of oversights or shortcomings in the present procurement process. Specific recommendations adopted by the Task Force included a requirement that all hospitals, as a condition of participation in Medicare, adopt "routine inquiry" policies and procedures for identifying potential donors and providing next-of-kin with appropriate opportunities for donation. Another recommendation was that organ procurement agencies be strengthened by establishing criteria which they must meet in-order to be certified and by recertifying them on a periodic basis. (See *Organ Transplantation,* Report of the Task Force on Organ Transplantation, April 1986, pp. 31-34, 59-61.)

The Committee bill incorporates both of these recommendations. First, it would require that all hospitals, as a condition of participation in Medicare or Medicaid, adopt "routine inquiry" protocols for identifying and assisting potential organ donors. The Committee notes the distinctions made in the Task Force report between "routine inquiry" and "required request", and intends for the provision to be implemented accordingly. The hospitals are to carry out this provision with discretion and sensitivity to the circumstances, views, and beliefs of the next-of-kin of the organ donor.

Second, the bill precludes Medicare and Medicaid payments for organ procurement, if the organ procurement agency does not meet specified standards. In order to satisfy this requirement, the procurement agency must either qualify for a grant under title II of the National Organ Transplant Act, or meet the standards set forth in title II without having received a grant, or meet the standards established by the Association of Independent Organ Procurement Agencies. These latter standards are comparable to those set forth in title II and were favorably reviewed by the Task Force. Those agencies that did not have grant would have to be recertified as meeting required standards at least every two years.

COBRA technical corrections (Sec. 4509)

The bill would make several technical corrections that have been identified in the implementation of the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272).

The first deals with payments for the direct costs of graduate medical education. It would clarify that the special transition rule, under which foreign medical graduates who were in residency programs before July 1, 1986 but who have not passed the requisite qualifying examination may be counted at a reduced rate, would last only for the twelve month period ending on June 30, 1987.

The second deals with the payment level set for health maintenance organizations and competitive medical plans. COBRA required that these rates be published in the Federal Register each year by a certain date. In response to concerns expressed about delays caused by the clearance process for publishing items in the Federal Register, the bill would allow HCFA to announce these rates in notices to the affected parties, in lieu of publication in the Federal Register.

The third correction would clarify that prohibitions against billing for unauthorized services of assistants at surgery apply to both assigned and non-assigned claims.

The fourth correction, also affecting the assistant at surgery provision, is needed because the carrier and PRO systems are not yet in place to make pre-procedure review of the need for such services, as required under COBRA. It would authorize post-procedure review until November 15, 1986.

The fifth provision would extend the "Access: Medicare" demonstration project for an additional 10 months.

Several other coding, numbering and cross-reference corrections would also be made.

Waiver of the 50 percent enrollment requirement for HMOs (Sec. 4510)

Current law requires that health maintenance organizations and competitive medical plans, in order to qualify for risk contracts under Medicare, must enroll sufficient private patients that the proportion of Medicare and Medicaid enrollees does not exceed 50 percent of their total enrollment. Current law also allows the Secretary to waiver this requirement if special circumstances warrant such a waiver and the HMO or CMP is making reasonable efforts to enroll the requisite number of private patients.

Concerns have been expressed to the Committee about the manner in which this waiver authority has been exercised, as well as about the failure of some HMOs to make sufficient efforts to bring their private enrollment into balance with their Medicare and Medicaid enrollment. The bill amends the requirements for obtaining a waiver, by authorizing the Secretary to waive the 50 percent rule only to the extent that the population in the area being served by the HMO or CMP consists of more than 50 percent Medicare and Medicaid eligible persons.

Current law authorizes the Secretary to terminate a risk contract with an HMO or CMP under specified circumstances. However, the Department has noted that it does not have authority to take appropriate corrective actions, short of termination, if the HMO or CMP fails to meet the requirements of the Medicare law. The bill, therefore, provides authority for the Secretary to suspend Medicare payments for new enrollees, if the Secretary finds that the HMO or CMP has failed to satisfy the requirements of the 50 percent enrollment rule.

Provisions Relating to Part B

Vision care (Sec. 4521)

Under current law, Medicare will reimburse for eye examination services furnished by an ophthalmologist, or by another doctor of medicine or osteopathy, to a patient with a complaint or symptom of eye disease or injury. Medicare will reimburse for examination services furnished by an optometrist, however, only if the services are related to the condition of aphakia. Medicare will not pay for eyeglasses or for eye examinations for the purpose of prescribing, fitting or changing eyeglasses (except in the case of prosthetic lenses for aphakic patients). Payment is denied for all refractive procedures, even if performed in connection with the diagnosis or treatment of an eye disease or injury or for the purpose of prescribing prosthetic lenses.

The Committee has held two hearings at which these coverage rules were examined. On both occasions, the Committee was advised that these rules are impinging on beneficiaries' access to needed eye care. Many beneficiaries are either foregoing covered eye care or are paying out-of-pocket for eye care services furnished by optometrists, because they do not have ready access to an ophthalmologist and because the present rules are too difficult to understand.

The Committee bill would allow medicare payments for eye examination services furnished by optometrists, subject to two prerequisites. The service must be one which is currently covered by medicare if furnished by a doctor of medicine or osteopathy and it must be within the services the optometrist is authorized to perform under the licensure laws of the State in which the service is performed.

The bill would not expand or change the current coverage and reimbursement rules in any other manner. To be reimbursed, the services would, as under current law, have to be reasonable and necessary for the diagnosis of an injury or disease. The current, generally applicable rules for reasonable charge reimbursement would be used to determine payments to optometrists. It is the Committee's expectation that the medicare carriers, with guidance from the Health Care Financing Administration, would use information regarding payments they make for optometrists' services under their own health plans, or other appropriate information, to establish the initial customary and prevailing charge screens.

Occupational therapy services (Sec. 4522)

Occupational therapy is a medically prescribed therapy concerned with improving or restoring functions of an individual who has been impaired by illness or injury or, when functions have been permanently lost or reduced by illness or injury, with improving the individual's ability to perform those tasks required for independent functioning.

Under current law, medically necessary occupational therapy services are covered under part A of Medicare when provided as a part of covered inpatient hospital services or post-hospital extended care services in a skilled nursing facility, or as part of home health services or hospice care. Part B coverage is limited to treatment in a hospital outpatient department, comprehensive outpatient rehabilitation facility, home health agency or when incident to a physician's service.

The Committee bill would extend reimbursement under part B of medicare for occupational therapy services. Occupational therapy would be covered when provided in a skilled nursing facility (when part A coverage is exhausted), in a clinic, or a rehabilitation agency. Payment for services in these settings would be made on a reasonable cost basis.

In addition, occupational therapy services would be covered when furnished in a therapist's office or a beneficiary's home, if the therapist met licensing and other standards prescribed by the Secretary. No more than $500 in incurred expenses would be eligible for coverage in a calendar year per beneficiary. Payment for these settings would be based on 80% of reasonable charges.

Generally speaking, the bill would make medicare coverage of occupational therapy services comparable to the existing coverage of physical therapy services.

The Committee believes that the value of occupational therapy services to beneficiaries merits a modest expansion of the program. Further, the Committee finds that such services have the potential to reduce and avoid the need for institutional care, while enabling the beneficiary to function more independently.

Services furnished by physician assistants (Sec. 4523)

Under current law, the services of physician assistants are not explicitly recognized, and no specific payment is authorized under Medicare for such services, except in the case of rural health clinics. The revised conditions of participation for hospitals, published by the Health Care Financing Administration on June 17, 1986, acknowledge that such services are appropriate and hospitals may use them without jeopardizing their participation in Medicare. However, the hospital would not receive any reimbursement for such services and would have to pay physician assistants out of the hospital's PPS payment. This clearly discourages the use of these services.

Physician assistants might also be utilized in physician's offices under the "incident to" rules of Medicare, but no payment is authorized under Medicare other than that billed by the physician as part of the services he personally performed. Again, this discourages the use of such services.

The Committee bill would authorize Medicare payments for the services of physician assistants, under specified circumstances. The Committee believes that such services can provide increased access to physician services, in a cost-effective manner, without a diminution in quality. The experience to date with rural health clinics has indicated this to be true. When the Congress passed the Rural Health Clinic Act in 1978, it called for HCFA to conduct a demonstration of the use of physician extenders in urban clinics. That demonstration has been undertaken, but the results are not yet available to us. However, we have been informed of some preliminary information regarding a demonstration project involving the use of physician assistants in nursing homes. The experience there suggests that such services can result in lower utilization of hospital services, increased access to physician services, no apparent effect on quality, and possible reductions in the overall cost of care.

The bill would authorize Medicare reimbursement with respect to physician assistant services performed in a hospital or skilled nursing facility or as an assistant at surgery, when these services are furnished in conformance with all applicable Federal and state laws. Thus, the services would have to meet State laws regarding the licensure, scope of practice, and medical direction of physician assistants. In addition, for example, payment would be authorized for services as an assistant at surgery, only if the services of such an assistant were necessary in the particular case.

In authorizing payments for these services furnished in skilled nursing facilities, the Committee is responding to concerns that patients in such facilities may have restricted access to physician services. Therefore, the Committee would not want the intent of this provision to be thwarted by interpretations of existing laws or regulations, including the conditions of participation for SNF's that might preclude physician assistants from furnishing services they are qualified to perform under state law. Because physician assistants necessarily furnish services under the direction of a physician, the Committee expects that the services of physician assistants will be recognized under this provision to the fullest extent possible.

In view of the fact that physician assistants cannot practice independently, the bill would not authorize them to bill directly under Medicare. Non-assigned claims would continue to be billed by the beneficiary. Assigned claims could be billed only by the physician, hospital, nursing home, or other employer of the physician.

Payment would be made on a reasonable charge basis under Part B. The bill would establish an upper limit on such reasonable charges, at 90% of the prevailing charge applicable to physicians' charges for the same service in the same locale. This is not intended to authorize the Secretary to set lower limits on payments for the services of physician assistants.

Services of nurse anesthetists (Sec. 4524)

The services of certified registered nurse anesthetists ("CRNAs") are currently recognized as appropriate services under the Medicare program and arrangements are made for Medicare reimbursement. However, under current law, CRNAs cannot be reimbursed directly by Medicare.

Prior to the implementation of the Medicare prospective payment system for hospitals, hospitals were reimbursed on a cost basis for CRNA services if the CRNA was employed by, or under contract with, the hospital. When the PPS was initially instituted, CRNA services were incorporated in the services to be included within the PPS "DRG" payment. This had the effect of discouraging the use of CRNA services, even though they are appropriate, high-quality, and cost-effective services. In section 2312 of the Deficit Reduction Act of 1984, the Congress sought to resolve this issue on an interim basis, pending further reform in physician or anesthesia services. This provision allowed hospitals to be paid on a cost basis, in addition to whatever PPS payments are made for an individual patient, for the services of CRNAs who are employed by or under contract with the hospital. This arrangement is due to expire with hospital cost reporting periods beginning on or after October 1, 1987.

Under current law, the services of a CRNA are also recognized, for purposes of Medicare reimbursement, when the CRNA is employed by a physician. In this situation, the physician can bill, on a reasonable charge basis under Part B, as if he had actually performed the service. The CRNA's compensation in this instance is a matter between the CRNA and the employer.

Physicians are also able to receive payment, on a reasonable charge basis, when they provide medical direction to a CRNA employed by or under contract with a hospital. In this instance, the reasonable charge of the physician is reduced, from what it would have been had he performed the anesthesia service himself, to reflect the reduced level of his involvement and the fact that reimbursement for the CRNA is being made through the hospital.

The Committee bill authorizes direct payments, on a reasonable charge basis under Part B, for CRNA services. The bill would call for the Secretary to implement this provision in a manner that would not increase the total expenditures for CRNA and anesthesia services from what they would have been in the absence of this provision.

The Secretary would be required to set a limit on the prevailing charge screens for CRNA services. It is the Committee's expectation that the Secretary would use data from the present cost reimbursement made to hospitals to establish equivalent reasonable charge payments per procedure and would assume, for purposes of assuring budget neutrality, that all CRNA services would have been reimbursed on a cost basis. In paying for CRNA services under this provision, the Secretary may adopt the methodolgy currently used to pay for anesthesiology services, which involves "base units" assigned to each procedure and additional units for time intervals, or he may adopt some other method as appropriate to differentiate among services requiring different degrees of time, skill and risk. The Secretary may also make appropriate adjustments for changes in technology, trends in prices and cost-of-living, and variations in costs and charges among regions or carrier locales.

In addition to setting payments for CRNA services in a budget neutral manner, the Secretary would make adjustments in the payment of physician fees for medical direction of CRNAs, to the extent necessary to assure that total payments for anesthesia services are also budget neutral. For this purpose, the Secretary might reduce time units or base units, or derive some other method of adjustment. Because of concerns that reductions in the amount Medicare pays for medical direction might not be accompanied by commensurate reductions in the amount charged to patients on nonassigned claims, the bill would also place a limit on the amount that can be charged to a patient in situations where the Medicare payment has been reduced under this provision. The physician could charge the patient no more than 125% of the Medicare prevailing charge. These charges would be monitored and violations would be subject to sanctions by the Secretary.

In adopting this provision, the Committee does not intend to interfere with or override state law requirements regarding licensure or the practice of medicine or nursing. Nor does the Committee intend to interfere with requirements established by hospitals, consistent with state and Federal requirements, regarding the delivery of anesthesia services. The bill would not interfere with or mandate any employment relationships between CRNAs and others, nor would it dictate a single, uniform billing arrangement for CRNS services. Billing for such services could be done by an individual CRNA, by a group practice, or by a physician or hospital employer. The services of the CRNA and the medical direction of a physician could be billed together on one claim, so long as the services were clearly and separately identified and all other requirements of law were met.

Payment for physician services (Sec. 4525)

Under current law, Medicare pays for physician services on the basis of "reasonable charges", as determined under various Medicare rules and constraints. As a general matter, the reasonable charge is the lowest of (1) the physician's actual billed charge; (2) the physician's "customary charge" based on his actual charges during a prior base period; or (3) the prevailing charge screen, which is derived from the customary charges for all like physician services in the geographical area. Increases in the prevailing charge screen are limited by an economic index (the "MEI"), that is designed to reflect general inflation and changes in physician's office practice costs. At present, reasonable charges are in effect for a calendar year, and customary charges are based on actual charges during the July through June period preceding the start of the calendar year.

The Deficit Reduction Act of 1984 (P.L. 98-369) instituted a temporary freeze on Medicare reasonable charges, as well as a temporary freeze on the actual charges billed to patients. It also instituted a new program, called the participating physician program, which permits physicians to sign an agreement to take assignment, and accept the Medicare reasonable charge as payment in full, for all services furnished to Medicare enrollees. Nonfinancial incentives were provided to encourage physicians to sign such agreements.

The Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272) extended the temporary freeze with respect to nonparticipating physicians through the remainder of the calendar year 1986. It granted participating physicians an increase in prevailing charges equal to the MEI scheduled for 1986 (3.15 percent), plus an additional one percent. It also adopted other measures designed to improve the participating physician program. The current freeze on nonparticipating physicians is due to expire on December 31, 1986, under current law, but the participating physician program is a permanent feature of current law and the prevailing charge screen for nonparticipating physicians is designed to lag behind that for participating physicians by one year.

The Administration has indicated its intention to adjust the MEI increase that would otherwise go into effect on January 1, 1987. The purpose of the adjustment is to make a one-time correction for an error in the index, that occurred during the period between 1974 and 1985. HCFA's intended adjustment would result in an increase in the prevailing charge screen, for both participating and nonparticipating physicians, estimated to be less than one percent.

The Committee does not agree with the Administration that this adjustment should be made. The MEI methodology has been revised, as of January 1, 1985, so the error has been corrected for future periods. The adjustment amounts to a virtual continuation of the freeze, which was originally intended to last but 15 months, but has since been extended to 22 months for participating physicians and 30 months for nonparticipating physicians. Moreover, the adjustment would undermine the participating physician program by failing to give those physicians any increase and by failing to place any constraint on a nonparticipting physician's actual charge billed to the patient.

The Committee bill would prohibit the Secretary from making the intended adjustment.

In order to avoid confusion in the future about the appropriate MEI increase for participating physicians, and make sure that participating physicians receive the full MEI increase scheduled for January 1, 1987, the bill would also clarify that the one percent additional increase granted to the prevailing charge screen for participating physicians last year is to be treated hereafter as a permanent, one-time addition to the cumulative MEI for participating physicians.

The practical effect of this provision, in combination with the provision in COBRA that the freeze on the prevailing charge screen for nonparticipating physicians is a permanent reduction in the cumulative MEI for nonparticipating physicians, is to create two separate cumulative Medicare Economic Indices—one for participating physicians and one for nonparticipating physicians. It is the Committee's intent that, in the absence of further action by the Congress, the lag between the prevailing charge screen for participating physicians and nonparticipating physicians instituted by COBRA be interpreted as calling for the same percentage increase in the MEI each year for these two groups, rather than giving nonparticipating physicians the same increase in one year that the participating physicians received in the prior year.

The bill would also adopt a differential increase in the prevailing charge screen, depending on whether the claim is made on an assigned basis, and would retain limits on the charges that can be billed by nonparticipating physicians. The purpose of these provisions is to provide incentives to become a participating physician and for nonparticipating physicians to accept assignment in individual cases. They are also designed to provide protections for Medicare enrollees against greater out-of-pocket expenses on non-assigned claims, and to restrain the increase in customery charges in later years.

Under the Committee bill, participating physicians would realize the full MEI percentage increase scheduled for January 1, 1987. This is estimated to be about 3.2 percent by the Congressional Budget Office. Nonparticipating physicians would also receive the full MEI increase on those claims for which they accept assignment. For those claims that are not accepted on assignment, nonparticipating physicians would receive only a 1% increase in the prevailing charge screen.

The limitation on actual charges billed by nonparticipating physicians would also differentiate between assigned claims and nonassigned claims. For assigned claims, the physician would be able to increase his actual charge over what he is now permitted to charge (which is his actual charges during the April–June quarter of 1984) by the same percentage as the MEI increase. For non-assigned claims, he would be able to increase his current actual charge by no more than 1%. The Medicare carriers would monitor these actual charges in the same manner as they have been doing during the current freeze, and the Secretary would sanction violations by civil money penalties or exclusion for the program.

These limitations on actual charges are adopted after extensive consideration of alternative proposals and the concerns expressed by an variety of interested parties. When the Congress adopted the provisions for the temporary freeze in July 1984, we did so in order to save Medicare expenditures, moderate the rapid increase in health care cost, provide financial protection to beneficiaries, and provide us time to review payment reforms. The extension of the freeze through 1986 was based on the same considerations. Unfortunately, we have not received the reports we requested from the Secretary on physician payment reform and the effects of the freeze, that were due on July 1, 1985, and we are not ready at this time to make reforms in payments for physician services.

If we did not take any further action at this time, we would be faced with a lapse of the current freeze provisions as of December 31, 1986, including a lapse of the protections afforded Medicare enrollees. This would not only place them at risk of substantial increases in charges billed on non-assigned claims, but would also increase the probability of their being billed through non-assigned claims, because of the financial disincentives to become a participating physician or take assignment.

The Committee believes that it is unacceptable to place Medicare beneficiaries in such a situation. At the same time, the Committee is unwilling to continue the existing freeze, which was always intended to be temporary. The bill reflects the Committee's efforts to accommodate these varying, and to some extent competing considerations. Once again, it is our intent that this be a temporary resolution of the issues and that we will be able to develop acceptable payment reform measures that obviate the need for these makeshift policies.

Guidelines for use of inherent reasonableness authority (Sec. 4526)

Section 9304 of the Consolidated Omnibus Budget Reconciliation Act of 1984 requires the Secretary to promulgate regulations setting forth criteria that will be used to determine that the standard reasonable charge rules have resulted in payments that are grossly excessive or deficient, and the criteria that will be used to adjust such charges into make them more reasonable. This provision was adopted in response to concerns expressed about the lack of such criteria and the manner in which such adjustments were being made by Medicare carriers, under the so-called "inherent reasonableness" authority stated in the current Medicare regulations.

Additional concerns have since been expressed about how the Secretary might attempt to use such authority to set national payment levels or national prevailing charge screens. Such concerns go to the manner in which the Secretary might develop such limitations and to the fact that there are no protections in current law against having Medicare payment reductions shifted to Medicare enrollees in the form of higher out-of-pocket expenses on non-assigned claims. The Secretary does not have authority under current law to reduce or limit actual charges, or to require that claims be submitted on an assigned basis.

In response to these concerns, the Committee bill would establish additional requirements that the Secretary must meet before changing a reasonable charge on the grounds that it is not inherently reasonable. The Secretary would have to follow the criteria established in the regulations mandated by COBRA. In addition, the Secretary would compare the charge in question with resource costs or charges for similar procedures, for the same procedure over time, or for the same procedure in different geographical areas, as well as comparing payment amounts allowed by other payors. If the Secretary sought to adjust for geographical differences that appeared to be grossly out of line with charges for the same service or procedure elsewhere in the country, the Secretary would have to take into account regional differences in the cost of furnishing the service.

Before making an adjustment, the Secretary would also be required to consider the effects of a change on such matters as quality, access, assignment rates, participation rates, and beneficiary liability. Before proceeding with a reasonable charge adjustment, the Secretary would also have to consult with the Physician Payment Review Commission, publish a notice of the proposed adjustment in the Federal Register, and allow for public comment.

The bill would also provide for protections against increases in the Medicare enrollee's liability on non-assigned claims. Whenever the Secretary exercised the authority in this section to reduce the Medicare reasonable charge, a limit would be placed on the maximum amount that the physician could bill the patient. That limit would be 125% of the prevailing charge for that service, as adjusted downward by the Secretary under this provision. A physician who charged in excess of this amount would be required to refund the excess amount to the patient, and a physician who knowingly and willfully billed charges in excess of this amount or refused to make a refund could be subject to civil money penalties or exclusion from the program. A limitation on actual charges was selected, in lieu of requiring assignment on all claims for which Medicare charges are reduced, in an effort to balance concerns about the beneficiaries' liability with concerns about the effects that requiring assignment on all claims might have on access and quality.

Payment for cataract surgical procedures (Sec. 4527)

Cataract surgery is a procedure that has been undergoing rapid changes and improvements in techniques and technology. These have enhanced both access and quality. Cataract surgery is now the most common and most rapidly growing surgical procedure covered by Medicare, with over one million procedures performed on Medicare enrollees in 1985. It is also a procedure that is performed predominantly on Medicare enrollees, with Medicare patients representing over 80% of all cataract surgeries. Thus, practices and payment levels are not as strongly influenced by the non-Medicare patient community as is the case with most other procedures.

The Health Care Financing Administration has conducted extensive research and analysis on the practices and reasonable charge levels involved in cataract surgery and the anesthesia services furnished during cataract surgery. The HHS Inspector General has also conducted a study on Medicare reimbursement for anesthesia services furnished during cataract surgery. In testimony before the Subcommittee on Health and Environment, HCFA advised that it has concluded that the normal application of the Medicare reasonable charge methodology has resulted in payments that are currently far in excess of those warranted by the degree of time, resources, and expertise demanded of the physician or those needed to assure access and quality of care. HCFA further testified that, on the basis of its analysis, it intends to reduce the reasonable charges for these services.

The Committee has reviewed the information, analysis and conclusions made available to it by HCFA and is persuaded that some reduction in Medicare payments is warranted for these particular services. However, the Committee is concerned that reductions in Medicare payments could result in substantially higher payments by Medicare enrollees on non-assigned claims, if physicians do not make comparable adjustments in their actual charges. HCFA does not currently have authority to protect Medicare enrollees against such increases, through requiring that claims be filed on an assigned basis, through reductions in the actual charge, or by other means.

The Committee bill would require the Secretary to reduce Medicare reasonable charges for these services, but would add a provision limiting the maximum amount that could be charged to a Medicare enrollee.

The first reduction would be in the payment for cataract surgery when an intraocular lens is implanted. Implantation of a lens is now the preferred procedure among physicians and patients and it is performed in over 80% of cases. It is now a relatively quick procedure, but it does require skill and expertise beyond that needed for removal of the cataract alone. When a lens is not implanted, it is typically because the patient presents problems or complications that indicate a lens implantation is not appropriate. These same conditions or complications typically mean that the cataract removal procedure is more difficult and time-consuming than would be the case with a patient who was a candidate for lens implantation. This helps to explain why HCFA found that there was virtually no time differential, on average, between cases with lens implantation and cases without lens implantation.

The current Medicare reasonable charge levels for cataract surgery are based on historical practices and charge levels, and reflect the fact that at one point cataract removal and lens implantation were two distinct procedures typically performed at different times. The current reasonable charges for the procedure with lens implantation reflect the reasonable charges for the two procedures when done separately. In its testimony before the Subcommittee, HCFA indicate that there is a differential of approximately 55%

between the prevailing charge for lens extraction without an IOL and lens extraction with an IOL.

The Committee recognizes that some differential in payment is warranted when a lens is implanted, to reflect the additional skill and expertise involved. However, the Committee concludes that changes in technology and medical practice have resulted in the charges for this procedure being excessive. Moreover, it is the Committee's understanding that the current charges for cataract removal without lens implantation is not viewed as inadequate, even though it typically involves a more difficult procedure than cataract removal itself when a lens is implanted. The Committee concludes that it is appropriate to take this into consideration in determining an appropriate differential in payment when a lens is implanted. Based on HCFA's analysis and these considerations, the bill would set an upper limit on the prevailing charge for cataract removal with lens implantation of 110% of the prevailing charge for cataract removal without lens implantation.

Anesthesia services during cataract surgery have also undergone significant changes over the last few years, so as to improve the safety, quality and cost-effectiveness of such services. The current Medicare reasonable charges for these services, however, do not reflect these changes.

Payments for anesthesia services are based on a unique system that combines base units, which are set according to the difficulty, risk and other factors involved in the procedure, with time interval units, which reflect the amount of time devoted to the service. These base and time units are then multiplied by a dollar conversion factor to determine the reasonable charge for each physician.

According to HCFA, the number of base units attributable to anesthesia services during cataract surgery is typically eight. This reflects the level set when cataract surgery was done predominantly as an inpatient service and the patient was given general anesthesia. Today, most cataract surgery is done on an ambulatory basis in a hospital outpatient department or a free-standing ambulatory surgical facility. Often, the patient is given local anesthesia and the anesthesia is administered by the surgeon rather than an anesthesiologist or other physician. For most of the procedures which are covered by Medicare when done on an ambulatory basis, the number of assigned base units is three; virtually all of them are assigned base units of three or four. Some carriers have reduced the level of payment for anesthesia services during cataract surgery, with no apparent effect on quality or access. Based on its analysis of this information, changes in technology and practice, and the study by the Inspector General, HCFA has concluded that payments for anesthesia services during cataract surgery are greater than warranted and greater than needed to assure access and quality.

Based on his review of these issues, the Inspector General recommended that payments for what he referred to as "monitored anesthesia" should be reduced to time units only, or to time units plus no more than three base units. The Committee is advised that HCFA is reviewing a proposal to reduce the base units for all anesthesia services during cataract surgery to four. The Committee concurs in HCFA's findings and resolution, and the Committee bill requires a reduction in the base units to four.

Because of the Committee's concern that reductions in Medicare payments might result in substantial increases in the out-of-pocket expenses of Medicare patients on non-assigned claims, the bill would also include a limitation on actual charges billed patients on non-assigned claims. The provision included in this section is the same as that included in other sections of the bill dealing with reductions in Medicare reasonable charges. Physicians could not bill patients in excess of 125% of the Medicare prevailing charge, as adjusted under this provision.

Clinical diagnostic laboratory services (Sec. 4528)

Section 2303 of the Deficit Reduction Act of 1984 restructured the method used by Medicare to pay for diagnostic clinical laboratory services furnished to ambulatory patients. Under that provision, statewide or carrier-wide fee schedules were established, effective July 1, 1984, based on a percentage of the prevailing fees that would have been in effect on that date.

At the time this provision was adopted, questions were raised whether hospital laboratories should be treated differently than independent laboratories, because they might need to have special equipment, to remain available more hours, or to respond more quickly, in order to meet the needs of their outpatient and emergency room patients. In response, section 2303 set the fee schedules for hospital laboratories, when serving outpatients of the hospital, at 2 percentage points higher than the fee schedules for independent laboratories. Section 2303 also provided that the fee schedules would expire for such services on June 30, 1987, and payment for such services would revert to a cost-based system. The date of this expiration was changed to December 31, 1988, by the Consolidated Omnibus Budget Reconciliation Act of 1985.

The Committee bill would conform hospital laboratory fee schedules to those for independent laboratories, by removing the 2 percent differential and eliminating the expiration of fee schedules for hospital laboratories. The Committee believes that this change will not have an adverse effect of access or quality under the existing fee schedules and notes that a study by the Comptroller General is due on January 1, 1987, which will include an examination of the potential impact on hospital laboratories of a national fee schedule.

The Deficit Reduction Act also provided that a national fee schedule would be instituted on July 1, 1987. The date of implementation was moved to January 1, 1988 by COBRA. The Committee bill would remove the deadline for this requirement, in view of the upper limits placed on the current fee schedules by section 9303 of COBRA. The Committee will review this issue again, after receiving the report of the Comptroller General on the anticipated effects of a national fee schedule.

The bill would also authorize payments to cover the transportation and personnel expenses of sending trained personnel to collect a specimen, by such means as venipuncture or catheterization, from a patient who is unable to travel from home or a nursing home to a physician's office or laboratory. The provision in DEFRA included payment of a nominal fee for the collection of such specimens. The intent of that provision was to pay for the actual drawing of the specimen, not for the expenses of going to the home of a patient in order to do so. The conference agreement for DEFRA stated explicitly that this provision was not intended to make any change in existing payment practices regarding trip fees. However, the Committee has been informed that there is confusion on this issue and that some carriers are now denying payment for trip fees that were previously paid. The payment of such fees seems to be a reasonable and appropriate cost in the provision of needed health care.

The bill would also allow laboratories to qualify for Medicare reimbursement if they meet state licensure or practice laws regarding the qualifications of the director of the laboratory. Medicare regulations currently require that, with some limited exceptions, the director of a laboratory must be a physician or a person holding a doctorate degree. Some states, however, permit laboratories to provide services in the state if the director of the laboratory has a master's degree and meets other qualifications. It is standard practice in the Medicare program to rely on state licensure and practice laws to assure that persons or providers are qualified to provide the care in question. It seems appropriate to do so in this instance, as well. This would preclude the Secretary from denying Medicare payments to a laboratory, on the grounds that the director does not meet the requirements currently set forth in the Medicare regulations, if the laboratory director met the requirements of state law. It is not the Committee's intention that the Secretary deny Medicare payments to a laboratory that does meet the current requirements in the regulations, on the grounds that state law requires a different standard.

Payment for parenteral and enteral nutrition (Sec. 4529)

Parenteral and enteral nutrition is a technology that has undergone rapid expansion in recent years. It saves lives and enhances quality of care, and it can do so in a cost-effective way by permitting patients to be discharged from institutions and receive the service at home. Because of its rapid expansion, however, questions have been raised whether the reasonable charges allowed by Medicare, which are based on historical charging patterns, are excessively high and could be reduced without impairing access or quality.

The Medicare carriers have collected data indicating that there are wide variations in the charges for these services. These data also show that, in many cases, the Medicare payments are excessive, compared to the charges for similar services and supplies that are readily available. HCFA has been reviewing a proposal to reduce the variations and the overall levels of payments, using the authority under current regulations to make adjustments for charges that are not inherently reasonable. Serious concerns have been raised about the data and analysis being used by the carriers and HCFA. Moreover, the project has been delayed because of the Secretary's obligation to comply with the provisions of section 9304 of the Consolidated Omnibus Budget Reconciliation Act of 1985. That section requires the Secretary to publish regulations setting forth the criteria by which a charge will be determined not to be inherently reasonable and the criteria by which it will be adjusted.

The Committee bill would require that the Secretary apply the "lowest charge level" provision in current law. This provision authorizes the Secretary to pay for services, supplies and equipment, that he determines do not generally vary significantly in quality from one supplier to another, at the lowest charge levels at which such services, supplies and equipment are widely and consistently available. The regulations implementing this provision establish such lowest charge levels at the 25th percentile of the charges submitted for the item or service in question.

The Committee believes that parenteral and enteral nutrition supplies and equipment are an appropriate candidate for application of the lowest charge provision. There are many suppliers in the market, supplying similar products. Many of these suppliers are regional or national in their scope of operation. Geographical variations in reasonable charges that result from historical charge patterns, and wide differentials in generally equivalent products, do not appear to be warranted.

HCFA has consolidated the payment of claims for these services in two carriers. It is the Committee's expectation that HCFA will apply the lowest charge level on either a national basis or within each of the two areas served by these carriers, but that exceptions can be made to meet unusual circumstances. It is also the Committee's expectation that, in setting lowest charge levels, the Secretary will endeavor to compare like products—products that are equivalent in meeting the nutritional needs of the patient and products of comparable quality—rather than looking solely at the volume of nutrients in a particular container or comparing items that are dissimilar in function or quality. All the available charges submitted for such services should be used in calculating the lowest charge level. The Secretary should be sensitive to special patient needs or special circumstances and should provide for exceptions to the standard charges computed under this provision, when appropriate.

The Committee's bill would not reduce the payment for these services as much as would be the case under the proposal being that HCFA currently has under review. The bill would preclude HCFA from proceeding such a proposal at this time.

Payment for oxygen therapy services (Sec. 4530)

Under current law, oxygen therapy services provided in the home under Medicare are reimbursed on a reasonable charge basis. The Committee heard testimony that, since Medicare will pay for whatever amount of oxygen is used by a patient, the current system does not contain any incentives for patients and suppliers to use the most efficient system and this leads to a wastage of oxygen and money.

Under the Committee bill, the Secretary would be required to develop a prospectively determined, monthly capitation fee schedule for oxygen therapy in the home. The Secretary would have discretion to detemine whether the fee schedule should be on a regional, statewide, or carrier service area basis. The payment would be made on the basis of the number of units of oxygen prescribed for a patient per month, without adjustment for the actual number of units used. Thus, the payment amount would vary in accord with the amount prescribed by the physician.

The monthly capitation amounts would be determined on the basis of the reasonable charges determined under Medicare, during the twelve-month base period ending June 30, 1986, for consumable oxygen. In determining the monthly capitation amount, the Secretary would exclude charges during the base period relating to the purchase or rental of equipment. The payment amount under Medicare would equal 80% of the monthly capitation amount, with the patient being responsible for the normal 20% coinsurance. The amount paid under this provision would cover all services, equipment and supplies, as well as consumable oxygen, needed by the patient. There would be no additional payment for equipment and supplies, whether furnished on a rental, purchase, or lease-purchase arrangement.

The Secretary would also be required to provide for a minimum monthly amount for oxygen therapy in order to assure the availability of oxygen therapy services for beneficiaries requiring only small amounts of oxygen.

In no case would payment be made for oxygen therapy services prescribed by a physician who had a significant ownership interest or financial or contractual relationship with the organization providing the oxygen therapy services. The Committee recognizes that this could result in access problems in communities with a sole supplier of such services. In such cases, the Secretary would have the authority to grant an exception to this provision.

The Committee provision would also require the Secretary to pay bills for oxygen services promptly. The Committee expects that claims will be paid within 22 days, and provides for interest penalties for failure to make prompt payments.

The Secretary would be required to report to the Congress on the implementation and effects of these provisions by July 1, 1988. The Committee intends the Secretary's report to assess the effect of these changes on patient outcomes, the availability of oxygen therapy services to medicare beneficiaries, and changes in oxygen therapy technology.

Additional members for Physician Payment Review Commission (Sec. 4531)

The Consolidated Omnibus Budget Reconciliation Act of 1986 established a Physician Payment Review Commission of 11 members to make recommendations regarding Medicare payments for physician services. Members are appointed by the Director of the Congressional Office of Technology Assessment.

The Committee provision would add 2 Members to the Commission, increasing the size from 11 to 13 Members. The Committee action is in response to concerns that the Commission did not adequately represent the variety of interested and affected parties, particularly rural interests. The Director of the Office of Technology Assessment would appoint the two new members within 60 days of enactment of this Act.

Part B appeals (Sec. 4532)

Under current law, if an individual disagrees with a decision regarding his or her eligibility for Medicare, the individual is given the opportunity for an appeal to an administrative law judge ("ALJ") and to judicial review of the ALJ's decision. Similarly, if a beneficiary disagrees with a denial, in whole or in part, of a claim submitted under Part A of Medicare, he or she is entitled to a hearing before an administrative law judge, if the amount in controversy is $100 or more. The beneficiary also can seek judicial review of the ALJ's decision, if the amount in controversy is $1000 or more. Similar appeal rights are not available, however, to a beneficiary with respect to claims under Part B of Medicare.

If a beneficiary disagrees with a denial of a claim under Part B, he or she can only obtain a reconsideration by the carrier which denied the claim and, if the amount in controversy is $100 or more, a review by a hearing officer appointed by the carrier which denied the claim. There is no judicial review of the hearing officer's decision.

Part B claims were not accorded the same appeal rights as Part A claims at the inception of the Medicare program, because Part B claims were expected to be for substantially smaller amounts than claims under Part A. In addition, Part B claims are far more numerous than Part A claims and could present a substantial workload if judicial review were accorded to all of them. Today, however, Part B claims often involve very substantial amounts and, if denied, entail large out-of-pocket expense for the beneficiary.

Numerous concerns have been expressed by beneficiaries about the fairness and adequacy of this Part B appeals process. Some have expressed the concern that the hearing officers are not properly qualified or are not objective, because many of them are former employees of the carrier or because their continued service as hearing officers may depend on the carriers' being satisfied with the decisions they render. Other concerns deal with the way hearings are conducted, including the beneficiaries' inability to produce evidence or to challenge the hearing officers' decision rules or his reliance on unidentified experts and consultants.

The Committee bill would attempt to resolve these concerns by establishing an appeals procedure under Part B that is modeled after that available under Part A. Review by an ALJ would be available if the amount in controversy were $500 or more and judicial review would be available if the amount in controversy were $1000 or more.

Hearings under Part A are, in most instances, assigned to administrative law judges working in the Office of Hearings and Appeals of the Social Security Administration. Medicare appeals are very different from the social security complaints they typically hear and may represent a very small and infrequent portion of their workload. Therefore, these ALJ's may not develop the experience and expertise in Medicare appeals that they would if they devoted full-time to those appeals. With the additional workload that would be established under the bill, it is the Committee's expectation that the Department of Health and Human Services will give serious attention to establishing a separate office of hearings and appeals for the Health Care Financing Administration or otherwise creating a group of hearing officers devoted exclusively or predominately to Medicare appeals.

Alzheimer's disease demonstration projects (Sec. 4533)

Medicare beneficiaries with Alzheimer's disease or related disorders are covered for acute Medicare care services, including hospital care and physician services. However, these beneficiaries often require additional services, such as adult day care, counseling, respite care, and home and communitybased services, to maintain functioning and remain in their own homes. These services are not generally available under Medicare.

The Subcommittee held a hearing in January 1986 in Palm Harbor, Florida on Alzheimer's disease and related disorders. Each of the witnesses who appeared before the Subcommittee stressed the need for financing for alternative services in the community to allow families to keep their loved ones at home instead of having to seek care in a nursing home. The testimony presented also made it clear that there is a need to learn much more about what services are most effective and what it will cost to provide needed care.

Under the Committee bill, the Secretary of Health and Human Services would be required to fund at least five demonstrations to determine whether to include additional services for Alzheimer's disease and related disorder patients as a Medicare benefit. These projects would address the criteria for determining who is eligible for services as an Alzheimer's disease patient, the range of services needed, the cost of care for such patients, and the impact of such services on the health status and functioning of the patients.

The Committee bill would require that each of the five demonstration projects be put into place for a period of three years at a total funding level of $40 million for the cost of expanded services. An additional $2 million would be provided to fund an independent evaluation of the demonstration.

Under the demonstration, each site would receive approximately $2.5 million per year to fund expanded services for approximately 500 beneficiaries with Alzheimer's disease. The expanded services that should be provided by each project include case management services, outpatient drug therapy, home and community-based care, adult day care, and respite care and other supportive services and conseling for the family. The Committee is interested in learning which of these services is most effective in providing assistance to allow Alzheimer's patients to be maintained in their own homes and in the community. The Committee is therefore interested in assessing the cost and impact of supportive services, counseling, and respite care for the family, as well as direct services to the Alzheimer's patient.

The Committee is also interested in learning more about the diagnosis of individuals with Alzheimer's disease and the relationship between level of impairment and service needs. Accordingly, under the Committee bill, all participants in the Alzheimer's demonstration projects must receive a comprehensive medical and mental status evaluation upon entering the demonstration and prior to discharge. This comprehensive evaluation should include standard mental-status tests such as the information orientation concentration test, the minie mental status test, and the Dementia Rating Scale. In addition to the mental-status testing, the comprehensive evaluation should include a complete history; physical, psychiatric, and neurologic examination; and laboratory services. Any component of the evaluation that is not currently covered by Medicare is to be covered by the service dollars that would be made available under this bill.

In choosing sites for this demonstration, the Committee intends the Secretary to select geographically diverse areas with a significant number of Medicare beneficiaries living in the surrounding locality. Since participation in the demonstration is limited to those individuals currently eligible for Medicare, sites should be selected to assure that there are sufficient Medicare beneficiaries with Alzheimer's disease to achieve the goal of 500 project participants.

The Committee bill would require the Secretary to conduct an independent evaluation of the cost and effectiveness of the services provided under these demonstration projects. The Committee expects the evaluation to address the appropriateness of using the comprehensive medical and mental status evaluation as an eligibility screen to qualify patients with Alzheimer's disease and related disorders for receipt of expanded services.

The bill would require the Secretary to submit a report to Congress within 3 years, describing the projects in progress. After completion of the demonstration, the Secretary would also be required to submit a final report that evaluates the costs and benefits of providing expanded Medicare services and includes recommendations for appropriate legislative change.

The provisions would be effective on October 1, 1986.

Delays in processing Medicare claims

The Committee notes its concern about the delays taking place in the processing of Medicare claims by fiscal intermediaries and carriers, and the adverse effects this is having on patients and providers.

Prior to this year, claims were generally being processed within reasonable time frames and providers were able to manage their operations with some assurance that payment would be forthcoming. During the last several months, however, Medicare contractors have been instructed to delay deliberately in processing claims and paying bills. Extensive backlogs have developed. Both patients and providers have been adversely affected, and there is a growing discontent with the program. Home health agencies, which typically have modest working capital, have been particularly affected by this policy.

The Health Care Financing Administration first instituted the slowdown in payments on the grounds that reductions in the administrative budget under the Gramm-Rudman deficit reduction act left the contractors without sufficient funds to continue processing claims within their prior timeframes. However, in testimony before the Subcommittee on Health of the Committee on Ways and Means, on April 22, 1986, HCFA revealed that the policy of deliberate delay was viewed favorably by the Administration, irrespective of the Gramm-Rudman reductions, because it resulted in greater interest revenues for the trust fund. This is a highly inappropriate and objectionable policy.

Fiscal intermediaries and contractors, that were previously evaluated, in part, on the basis of whether they could process claims faster that specified benchmarks, have now been advised that their evaluations will be downgraded if they process claims more quickly than the new, delayed benchmarks.

The Committee intends to support measures to rectify this situation. Backlogs must be reduced, provider and beneficiary services restored, and processing times returned to their historical patterns and to practices common in the health insurance industry.

PROVISIONS RELATING TO MEDICAID AND MATERNAL AND CHILD HEALTH PROGRAMS

SUBTITLE G—MEDICAID AND MATERNAL AND CHILD HEALTH

Optional coverage for poor pregnant women and infants (Sec. 4601)

Under current law, States must provide Medicaid coverage to, among others, all pregnant women and all infants up to age 1 who meet the income and resource requirements under their State's Aid to Families with Dependent Children (AFDC) program. With respect to eligible pregnant women and infants, States must offer the same amount, duration, and scope of benefits as they offer to other mandatory-eligible groups. This requirement applies regardless of the family composition of either the pregnant woman or infant, and regardless of whether the woman or infant is receiving cash assistance under the AFDC program. States also have the option of extending coverage to pregnant women and children whose family income or resources exceed AFDC eligibility levels but who are unable to pay for needed medical care. These individuals, known as the "medically needy," qualify by incurring high medical expenses which, when applied against their incomes, bring their incomes down below the State's medically needy income level.

In November, 1985, the Southern Governor's Regional Task Force on Infant Mortality issued its final report, "For the Children of Tomorrow." The Task Force found that one out of four babies born to mothers receiving little or no prenatal care are born low birthweight. These babies are forty times more likely to die in the first year than babies who weigh more, and four times more likely to be hospitalized at birth. The Task Force concluded that the availability of prenatal care can make a significant difference in reducing these risks. In Georgia, for example, women who receive prenatal care are six times more likely to deliver a baby of normal birthweight than women who receive inadequate or no prenatal care. The Task Force also documented the savings that can result from early prenatal care, finding that between $2 and $10 can be saved in medical care costs for every dollar spent.

These conclusions confirm the findings of the study issued by the Institute of Medicine in 1985, "Preventing Low Birthweight." In testimony before the Subcommittee on Health and the Environment, the IOM study group concluded that each dollar spent on prenatal care could save over three dollars in reduced health care costs for the care of low birthweight infants. Other studies which have examined the cost-effectiveness of prenatal care for Medicaid beneficiaries have documented savings of at least $2 in health care costs for every dollar spent on prenatal care.

The Medicaid program has not been as effective as it should be in assuring access by prenatal care by high-risk, low-income pregnant women. A major reason is the linkage between Medicaid eligibility and AFDC payment standards. Currently, unless a State offers coverage to the "medically needy," a pregnant woman whose income or resources exceed those of her State's AFDC program cannot qualify for Medicaid. In many States, AFDC payment standards—i.e., in most States the amounts which an individual's countable income cannot exceed if she and her family are to remain eligible for benefits—are extraordinarily low. Information provided by the Congressional Research Service indicates that, as of January, 1986, the AFDC payment standards for a family of three ranged from $118 per month, or 15.5% of poverty, in Alabama, to $693 per month, or 91% of poverty, in Utah. Of the 51 States and jurisdictions, 12 States have set their AFDC payment standard at 60% of poverty or above; 20 States have set their standard between 40% and 60% of poverty; and 19 States have set their standard below 40% of poverty.

As a result, many families who are clearly poor and cannot afford needed medical care are nonetheless ineligible for Medicaid. Even in States that cover the "medically needy," health care providers must often be willing to furnish a substantial amount of health care services on a credit or charity basis until the individual has incurred sufficiently large medical bills to reduce her family income below the State's "medically needy" eligibility levels, which cannot exceed 133 percent of the State's AFDC payment levels. The Committee is informed that, in many States, few providers are willing to provide large amounts of uncompensated care, especially for pregnancy-related services to high-risk women. Instead, providers generally expect that payment for these services (including payment for hospital services) will be made prior to the delivery of the baby if the woman is not insured. As a result, thousands of poor pregnant women go without cost-effective care during pregnancy and thus, are at greater risk of bearing low birthweight infants, who are in turn at greater risk of dying within their first year of life or developing disabilities that will subsequently qualify them for Medicaid coverage.

The Southern Governors' Task Force made a number of recommendations regarding the delivery and financing of maternal and child health services designed to reduce infant mortality rates. One of these recommendations—that the Federal government amend the Medicaid law to permit States to provide Medicaid assistance to poor families whose incomes are over the States' AFDC standard of need—was subsequently adopted as a legislative priority by the National Governors' Association. Specifically, the Governors want an option that enables them to finance prenatal and infant care for low-income families under Medicaid without raising AFDC payment standards or adopting a "medically needy" program.

Based on this recommendation, the Committee bill would create a new optional categorically needy group composed of pregnant women and infants up to age 1 with family incomes of up to the

Federal poverty level ($760 per month for a family of 3 in 1986). States could choose whether or not to cover this group and, if so, at what level (between its AFDC payment level and 100 percent of the Federal poverty line) to set the income eligibility threshold. However, if a State chose to extend such coverage, it could not reduce its AFDC payment levels below the levels that were in effect as of April 17, 1986. Moreover, it would have to cover both the pregnant women and the infants up to age 1, and would have to set the income threshold at the same percentage of poverty for both pregnant women and infants, and for all family sizes.

States could exercise the option to cover this group whether or not they also offer coverage to the "medically needy." Unlike "medically needy" beneficiaries, however, this optional categorically needy group cannot qualify for Medicaid coverage by "spending down," or incurring large medical expenses. Instead, pregnant women and infants must have family incomes below the State-established levels in order to qualify for this optional coverage; the size of their medical expenses is not relevant. However, where a State chooses to cover both the "medically needy" and this new optional categorically needy group, the State could not require those pregnant women and infants that meet the new income test to "spend down" to a lower "medically needy" income level.

In determining either a pregnant woman or infant's income, the State would be required to use the same budgeting methodology that is used in determining a family's eligibility for AFDC benefits. Furthermore, in determining a pregnant woman's family income level, the Committee intends that a State would treat the woman as if her child were born and living with her at the time she applied for assistance. Thus, a single woman would be treated as a family of two, a pregnant woman living with a spouse or child as a family of three, and so forth.

Under the Committee bill, coverage for pregnant women would begin as soon as the pregnancy is medically verified and would continue for 60 days following the last day of pregnancy. Frequently, a pregnant woman's countable family income will change during the course of her pregnancy. This may happen either because a family member works a few additional hours or because the AFDC program's earned income disregards (which are used to calculate a family's countable income) expire, leaving the family with no additional real income but with more countable income. This slight change in countable income can disqualify a pregnant woman from Medicaid coverage in the middle of her pregnancy. Without Medicaid coverage, however, she may be unable to receive any prenatal care.

It is the Committee's understanding that the interruption of Medicaid benefits during pregnancy is a common occurrence in many States. It is also the Committee's understanding that prenatal care is most effective when it is received periodically and continuously throughout pregnancy. The Committee bill would, therefore, permit a State to treat a pregnant woman eligible for Medicaid under this new optional group as eligible for Medicaid throughout her pregnancy and post-partum period without regard to any change in her family income level. In effect, this option would permit States to guarantee a minimum Medicaid enrollment period for pregnant women that covers both the pregnancy and the post-partum period.

The Committee bill would require States to extend coverage for infants until age one. However, if the infant were an inpatient on its first birthday in either a hospital or a long-term care facility, coverage would have to be extended until the end of the infant's inpatient stay.

In order to ensure that low-income pregnant women with modest family resource levels are not denied coverage under this new optional program, the Committee bill would prohibit States from considering a pregnant woman's family resources (as defined under the AFDC or SSI programs) in determining her eligibility. In view of the compelling evidence for the effectiveness of prenatal care in reducing infant mortality, the Committee is particularly concerned that Medicaid coverage for pregnant women begin as soon as possible. However, restrictive AFDC resource tests ($1,000 per family, including a home and a car with an equity value of $1,500) often make this goal impossible. Such tests frequently result in the exclusion of self-employed families that own a truck or working equipment. A pregnant woman in such a family is then forced to either sell off her family's sole source of earnings in order to raise funds to pay for prenatal care or to forego such care entirely. In the view of the Committee, it would be irrational from the standpoint of public health policy to require poor pregnant women to make such a choice. It would defeat both the goal of ensuring family self-sufficiency and the goal of increasing access to early and adequate prenatal care.

With respect to infants, States would not be able to apply a resource standard or methodology that is more restrictive than that used under their AFDC programs. States, would be able, however, to elect to use the SSI resource standards for infants, some other less restrictive resource test, or to improve no resource requirement at all.

The infants covered under the Committee bill would be entitled to the same amount, duration, and scope of benefits provided to the categorically needy—e.g., AFDC cash assistance recipients—under a State Medicaid plan. The covered pregnant women, however, would be entitled only to coverage for services related to pregnancy. Such services include prenatal, delivery, and post-partum care as well as services required for conditions which may complicate the pregnancy.

Federal Medicaid matching funds would be available for this optional group for expenditures made on or after July 1, 1987.

It has come to the attention of the Committee that, in determining whether a "medically needy" pregnant woman has incurred sufficient medical expenses to reduce her family income below the State-established income levels, HCFA has verbally instructed the States that payments demanded by providers in advance of services rendered may not be treated as incurred expenses. It is evidently HCFA's position that no expenses can be "incurred" until services have been actually provided.

In the view of the Committee, this interpretation of the term "incurred" is inconsistent with the Medicaid statute and is contrary to prevailing obstetrical, hospital, and medical billing practices. The effect of HCFA's interpretation is to prohibit "medically needy" pregnant women from either registering in advance of hospital delivery or arranging with a physician for delivery services. Obstetricians and hospitals commonly will not provide care on credit. Indeed, the Committee is informed that prepayment requirements for pregnant women in some localities are as high as $3,000.

The Committee believes that the only reasonable interpretation is that a pregnant woman "incurs" a medical expense as soon as she is given a bill for her care. If a hospital or physician requires payment in advance of providing care, the women is obligated to pay before services are rendered. Therefore, she may present this bill to the State in order to establish Medicaid "medically needy" eligibility, even though the State will not pay the bill until the service is actually received. This interpretation will promote a basic purpose of the Medicaid statute by removing a financial barrier to access to early prenatal care by low-income women.

Optional coverage of elderly and disabled poor for all Medicaid benefits (Sec. 4602)

Under current law, Medicaid coverage is generally not available to a poor elderly or disabled individual unless he or she is receiving cash assistance under the Supplemental Security Income (SSI) program, is living in a nursing home, or has very high recurring medical expenses. The maximum countable income for eligibility for Federal SSI benefits in 1986 is $356 per month for an individual, or 76 percent of the Federal poverty level, and $524 per month for a couple, or 90 percent of poverty. In about half the States, the income level for eligibility is somewhat higher because the State supplements the Federal SSI benefit payment. In about 30 states, elderly and disabled poor who are not receiving SSI or State supplementary cash assistance qualify for Medicaid under "medically needy" coverage or under special provisions allowing coverage of individuals in nursing homes.

For those elderly and disabled who are eligible, Medicaid supplements Medicare coverage by filling in the gaps left by Medicare's cost-sharing requirements and by providing additional benefits to complement Medicare's coverage of acute care. Medicaid pays the Medicare Part B premium as well as the Part A and B cost-sharing and deductibles for Medicare beneficiaries. Medicaid also covers services not covered by Medicare, including prescription drugs, dental care, and nursing home care. States receive Federal matching payments for their Medicaid expenditures for this population. However, in the case of the "medically needy," States do not receive Federal Medicaid matching funds for expenditures for the Medicare Part B premiums of this group.

In the view of the Committee, extension of Medicaid coverage to poor elderly and disabled Medicare beneficiaries is a pressing priority. On March 26, 1986, the Subcommittee on Health and the Environment heard testimony from the Congressional Budget Office testified that 20 percent of our senior citizens—5 million people—are without Medicaid or private insurance to supplement their Medicare benefits. These beneficiaries, relying on Medicare alone to finance needed health services, are among the sickest and poorest of our senior and disabled citizens. They face substantial out-of-pocket costs for needed care and can incur devastating financial burdens when illness strikes.

The Committee observes that Medicare covers less than half of the health expenses of the elderly and disabled and require substantial cost-sharing. In 1986, Medicare beneficiaries will pay $186 for premiums for part B coverge, a $492 deductible for the first day of hospital care, and a physician deductible of $75 plus 20 percent cost sharing on all claims and extra billing if the physician does not take assignment. Medicare also does not cover many services that the elderly and disabled need, such as prescription drugs, dental care, extended nursing home care, or other long-term care services. As a result, out-of-pocket expenses for an elderly person with a moderate spell of illness can easily exceed $2,000. The Committee notes that this is a major expense for anyone, but a devastating financial burden for the nearly 4 million elderly poor struggling to live on incomes of less than $5,000 per year.

Medicaid provides protection for the poor who lack the ability to pay out-of-pocket for health services or purchase private supplemental insurance coverage. The Committee observes, however, that Medicaid does not reach all low-income elderly and disabled. Only 36 percent of the elderly with incomes below the Federal poverty line receive benefits from Medicaid today. An estimated 2.2 million elderly individuals with incomes below 100 percent of the Federal poverty level ($4,979 in 1984) are not covered.

It is precisely those without Medicaid or private supplemental coverage that have the greatest health needs and the lowest use of services. CBO testified that the elderly without Medicaid or supplementary private insurance were both older and sicker than other Medicare beneficiaries. Yet, despite their greater health needs, these individuals do not receive care at rates comparable to others. Those elderly with Medicare coverage only are 13 percent more likely to have fair or poor health than those with both Medicare and supplementary insurance, but they receive 35 percent fewer physician visits per capita, 25 percent fewer prescription drugs, and are 18 percent less likely to be admitted to a hospital.

The Committee believes it imperative to protect the poor elderly and disabled from the financial burdens of illness. The Committee bill therefore allows States, at their option, to extend Medicaid coverage to elderly and disabled individuals whose incomes is up to 100 percent of the Federal poverty guidelines ($477 per month for an individual and $603 for a couple). States could decide whether to extend coverage to this new "optional categorically needy" group and, if so, at what level to set the income eligibility threshold. However, if a State elected this option, it would have to cover both the elderly and the disabled, and would have to apply the same income standard and resource test to both groups and to all family sizes. In addition, if a State elects to cover some elderly and disabled under this option, it must also extend coverage to some pregnant women and infants up to age 1 in the optional categorically needy group created by section 4601 of the Committee bill.

The Committee bill uses as the upper bound for income eligibility for this optional group the non-farm official poverty line as defined by the Office of Management and Budget and revised annually. This level is adjusted for family size, but does not differentiate between the income needs of the elderly and non-elderly. The Committee has selected this measure of poverty status because it feels that it is appropriate to use the same measure of poverty for the elderly and non-elderly for purposes of Medicaid eligibility. Since the OMB poverty level is revised annually to adjust for inflation, States will have the opportunity to increase the eligibility standard to keep pace with inflation and the resultant changes in the poverty level.

The Committee notes that individuals who qualify for Medicaid eligibility under this new optional categorically needy group may not "spend-down" and obtain coverage by incurring large medical expenses. To be covered, an individual or family must meet the State-established income and resource standard without regard to medical expenses. However, the Committee intends that, in States which offer coverage to the "medically needy," elderly and disabled beneficiaries who qualify under the income levels set for the new optional group not be required to "spend down" further to the State's "medically needy" income level. Income would be determined using SSI methodologies.

To qualify for coverage, elderly and disabled individuals would have to meet the resource requirements of the SSI program, with the following exception. If a State offers Medicaid coverage to the "medically needy," it is permitted, at its option, to use the resources standards that it uses for its "medically needy" program instead of the SSI resource standards. This will permit States that wish to reach more low-income elderly and disabled to do so.

Benefits offered to this new optional group of elderly and disabled individuals would have to be the same in amount, duration, and scope as the Medicaid benefits offered by the State to its cagegorically needy cash assistance recipients, including payment of Medicare premiums and cost-sharing requirements for individuals eligible for both programs. In most States, the basic Medicaid service package includes prescription drugs, nursing home care, eyeglasses, hearing aids, and dentures. These benefits are especially valuable to the low income elderly since they are not covered under the Medicare program.

In addition, individuals covered by this provision will be protected from out-of-pocket physician expenditures if they receive care from physicians who participate in Medicaid. The Committee intends that those covered under this option be treated like other elderly and disabled Medicare beneficiaries and have their physician services under Medicare rendered on an assigned basis. Therefore, if the Medicare physician elects to collect the 20 percent coinsurance on the Medicare claim from the Medicare program, he or she must accept the Medicare payment amount as payment in full and bill the patient for the difference between his or her actual charge and the Medicare allowable charge.

The Committee anticipates that benefits provided to those entitled under this provision will primarily be acute medial care services. The Committee does not view this provision as an expansion of eligibility for long-term care benefits under Medicare. The income eligibility levels under Medicaid for the institutionalized are generally higher than poverty level standard under this provision. Therefore, the Committee does not expect that income standards for eligibility for nursing home care will be altered by this provision.

The Committee strongly encourages States to expand Medicaid coverage to additional low-income elderly and disabled individuals. The Committee hopes that the provision of Federal Medicaid matching funds for State expenditures on behalf of this new population will be an incentive to the States to cover additional poor elderly and disabled beneficiaries to help assure adequate access to health care services and financial protection against burdensome medical expenses. Under the Committee bill, Federal Medicaid matching funds would be available for expenditures for this new optional group on or after July 1, 1987.

Optional coverage of poor Medicare beneficiaries for Medicare cost-sharing requirements (Sec. 4603)

Under current law, low-income Medicare beneficiaries who are also eligible for Medicare in effect supplement their Medicare benefits with the services offered under Medicaid in their State. These Medicaid benefits generally include prescription drugs, dental care, hearing aids, and nursing home care, plus payment of Medicare's cost-sharing requirements. These include the Part A deductible and coinsurance requirements and the Part B premium, deductible, and coinsurance requirements.

Section 4602 of the Committee bill allows the States to expand eligibility for the elderly and disabled with incomes up to the poverty line for the full range of Medicaid benefits offered by the State to its cash assistance recipients. This section gives the States another, more limited, option. States would be permitted to pay just for the Medicare Part B premium and the other Parts A and B cost-sharing requirements for Medicare beneficiaries whose incomes are below a threshold set by the State, up to the Federal poverty line. States would determine whether they wished to offer this assistance and, if so, where to set the income eligibility standards. However, if a State offered to cover the Medicare cost-sharing expenses of any elderly and disabled, it would have to cover some pregnant women and children in the new optional categorically needy group established by section 4601 of the Committee bill.

Unlike those elderly and disabled covered under section 4602, individuals receiving assistance with Medicare cost-sharing obligations would not be treated as Medicaid beneficiaries for all purposes. However, as in the case of the elderly and disabled covered under section 4602, a State opting to offer this more limited coverage would receive Federal matching payments for its expenditures on behalf of these individuals.

To qualify for assistance under this provision, elderly and disabled Medicare beneficiaries would have to meet the income and resource standards established by the State, using SSI counting methodologies. The Committee bill permits States to set income thresholds at any level up to 100 percent of the Federal poverty line, but the threshold must be the same for both the elderly and disabled, and for individuals and couples. Medicare beneficiaries covered under this provision must also meet SSI resource standards or, at State option, the State's "medically needy" standards. The Committee notes that elderly and disabled individuals are not permitted to qualify for assistance with cost-sharing by "spending down," or incurring large medical expenses.

The elderly and disabled covered under this provision would have to be entitled to Hospital Insurance benefits under Medicare Part A. However, they would not have to be covered under Medicare Part B, the optional Supplementary Medical Insurance program. The Committee bill gives States the option to offer to pay the Part B premiums in such circumstances and enroll this new beneficiary group in Part B.

For elderly and disabled individuals whom the State chose to cover, the Medicaid program would pay for the Part B deductible and the beneficiary's 20 percent coinsurance on Part B services. If the beneficiary uses a physician who takes assignment, Medicaid would pay the physician directly for the 20 percent coinsurance and the patient could not be billed for any amounts above the Medicare reasonable charge. However, if the physician elects not to take assignment, the beneficiary would submit the claim for the 20 percent coinsurance requirement to the State Medicaid program and would be liable for an additional amount charged by the physician. The Committee therefore encourages the States to make available to the elderly and disabled assisted under this provision a list of physicians in their communities who will agree to accept assignment.

The Committee hopes the States will elect to extend full Medicaid benefits to the elderly and disabled, as well as to pregnant women and infants, up to the poverty level. However, the Committee recognizes that the fiscal constraints facing many States may preclude the provision of comprehensive coverage for the low-income elderly and disabled population at this time. The Committee has, therefore, made this more limited Medicare cost-sharing option available to the States. The Committee hopes States with constrained resources will consider pursuing this option as a first step to more comprehensive coverage.

Medicaid eligibility for qualified severely impaired individuals (Sec. 4604)

Under current law, low-income individuals who qualify for Medicaid on the basis of disability must, in most States, meet the disability standards of the Supplemental Security Income (SSI) program. (Some States have opted to impose more restrictive disability criteria than those in SSI. These are commonly referred to as the "209(b) States" in reference to the statutory provision which gives them the option to use their 1972 eligibility standards for the elderly and disabled.) For purposes of SSI, an individual is not considered to be disabled if, after a 9-month trial work period, he or she is able to engage in "substantial gainful activity" (SGA), which the Secretary has defined as average counted earnings of over $300 per month. Loss of disabled status for SSI purposes means loss of categorical eligibility for Medicaid.

For the disabled with severe impairments, this policy creates an obvious and severe disincentive to work. Almost all of these individuals need medical coverage, but the jobs they are likely to hold tend not to offer employee group insurance coverage and tend not to pay sufficient amounts to allow these individuals to afford individual coverage. Such coverage, if available to them at all, is generally very expensive and often does not include coverage adequate to the needs of the disabled. If the disabled refrain from working, they will maintain their SSI and Medicaid benefits. If they begin to work, and engage in "SGA," they may lose their Medicaid benefits even though they still have their impairment. For a medically impaired individual to choose work under these circumstances is obviously irrational.

To address this problem, the Disability Amendments of 1980 (P.L. 96-265) added a new section 1619 to the SSI law. Section 1619(a) provides that an individual who loses eligibility for SSI because he or she has worked and demonstrated the ability to engage in "SGA," but who continues to have a disabling impairment, may become eligible for special SSI benefits until his or her countable income reaches the SSI income disregard "break-even" point ($756 per month in 1986 in a State with no supplementation). Those who qualify for these special SSI benefits continue to be eligible for Medicaid as long as they need medical assistance to continue working.

Section 1619(b) provides Medicaid coverage for individuals whose earnings exceed the SSI income disregard "breakeven point." This special Medicaid eligibility status applies so long as the individual: (1) continues to be blind or have a disabling impairment; (2) except for earnings, continues to meet all the other requirements for SSI eligibility; (3) would be seriously inhibited from continuing to work by the loss of Medicaid coverage; and (4) has earnings that are not sufficient to provide a reasonable equivalent of the Medicaid and SSI benefits that would have been available if he or she did not work. The Social Security Administration (SSA) has established a "threshold" in each State based on SSI and State supplementary payment levels and the State's average per capita Medicaid expenditures; individuals with gross earnings in excess of this "threshold" no longer meet requirement (4) and therefore lose Medicaid coverage, unless their individual medical expenses exceed the State's average Medicaid expenditures.

According to the Social Security Administration, section 1619 has enabled nearly 9,000 former SSI recipients to retain Medicaid coverage despite returning to work and performing "SGA." Unfortunately, this section expires on June 30, 1987, threatening the ability of these and future disabled individuals to obtain employment or to continue working. In the view of the Committee, extension of this provision is essential to the ability of the disabled to achieve their maximum feasible potential and to be fully contributing members of society.

The Committee bill amends Title XIX of the Social Security Act to establish a new mandatory, categorically needy coverage group: "qualified severely impaired individuals." This group includes any individual under 65 who received either SSI, State supplementation, or special 1619(a) benefits and who: (1) continues to be blind or have a disabling physical or mental impairment; (2) except for earnings, continues to meet all other requirements for SSI eligibility (including having unearned income below the SSI benefit standard); (3) would be seriously inhibited by the lack of Medicaid coverage from continuing to work or from obtaining employment; and (4) has earnings that are not sufficient to provide a reasonable equivalent of the Medicaid, SSI and Title XX attendant care benefits that would be available if he or she did not work. This mandatory coverage group applies both in States that currently follow the SSI definition of disability and in the "209(b)" States. This provision is effective July 1, 1987, immediately upon the expiration of the current section 1619(b).

The Committee recognizes that, as currently structured, section 1619 is not as effective as it should be in eliminating the work disincentives inherent in the SSI/Medicaid definition of disability. The Committee is aware that the Department has completed a study of the operation of section 1619, including an evaluation of the continued Medicaid coverage provisions; unfortunately, the Department is unwilling to release the results of the study and the Committee does not at this time have the benefit of this analysis. Rather than allow this important provision to expire, however, the Committee has decided to make it a permanent part of Medicaid law in its current form. To the extent that disabled individuals have been reluctant to risk the loss of cash benefits and medical coverage should section 1619 not be renewed, making the Medicaid coverage permanent should, in and of itself, increase the provision's work incentive. However, the Committee does intend to pursue structural reform of this provision, and it urges the Department to release its study so that this work can begin.

Clarification of eligibility of homeless individuals (Sec. 4605)

Under current law, States are prohibited from imposing residency requirements that exclude any otherwise qualified individual who resides in the State. There is no Federal requirement that an individual have a fixed or permanent residence in order to qualify for Medicaid. However, according to the Department of Health and Human Services and the General Accounting Office, some States and localities require applicants for Medicaid and AFDC to supply a fixed address in order to qualify. It appears that these requirements are imposed out of concern by the States that the Federal government will penalize them if they approve fraudulent applications from homeless recipients.

This nation's homeless are, by definition, the poorest of the poor. Whether they are street people, deinstitutionalized chronically mentally ill, newly unemployed, or displaced women and children, the homeless have serious health and mental health problems which are aggravated by poor clothing, constant exposure to the elements, poor nutrition, and overcrowding in shelters. These individuals do not have the income or resources to pay for needed medical care, and Medicaid is the logical source of coverage for them. Of course, only those homeless who meet Medicaid's categorical requirements (aged, blind, disabled, or member of a family with dependent children) as well as income and resource standards may qualify. However, many do meet these tests.

In the view of the Committee, there is no justification whatsoever for denying Medicaid coverage to an otherwise qualified homeless person simply because of that individual's lack of a fixed or permanent address. It unfairly penalizes the homeless and those hospitals and physicians who are willing to provide needed medical care to them despite their inability to pay. It may also result in the denial of medical treatment to the homeless, among whom the incidence of tuberculosis is high, creating an avoidable threat to public health.

The Committee bill therefore clarifies that States or localities are prohibited from imposing any residence requirement which excludes from Medicaid any otherwise qualified individual who resides in the State, regardless of whether or not the residence is maintained permanently or at a fixed address. The Committee intends that the otherwise qualified homeless be able to establish residency through the use of a mailing address at a shelter or similar facility, or by affidavit, or through any other means consistent with the circumstances under which the homeless live.

Treatment of income and resources required to be paid under spousal or child support orders (Sec. 4606)

The Medicaid statute provides that, in determining eligibility, States take into account only such income and resources as are "available" to the applicant or recipient, in accordance with standards prescribed by the Secretary. It has come to the Committee's attention that HCFA is attempting to prohibit some States from treating the income used to pay spousal and child support payments as unavailable to aged, blind, and disabled Medicaid beneficiaries when determining their income. For example, HCFA has recently disapproved a California State Plan amendment that permits an income disregard of spousal and child support made under court or by agreement with a district attorney on the grounds that income actually received is "available," even if it must later be used to make support payments.

The Committee finds HCFA's position untenable. The Committee fails to understand how income which must, by law, be used for the support of someone other than the Medicaid beneficiary can be "available" to him or her. The very purpose of a requirement at section 1902(a)(17)(B) of the Act that States take into account only such income and resources as are available is to prevent them from including in income the actual amounts that an applicant or beneficiary is legally compelled to use for someone else's support.

Consider the case of a low-income elderly couple where the pension and Social Security income is all in the husband's name. If the husband requires nursing home placement and is otherwise qualified for Medicaid, under current law all of the husband's income (except a $25 monthly personal needs allowance) would be applied to his nursing home bill, with the Medicaid program paying the difference between the husband's contribution and the facility's reimbursement rate. This obviously leaves the wife in an untenable financial position, since she is then without income from either her husband's pension or Social Security benefits. In a number of States, community spouses have had no choice but to go to court and sue their institutionalized spouses for support in an effort to avoid pauperization and having to go on welfare. Under HCFA's interpretation, the amount which the institutionalized spouse is required to pay under these support orders is still considered "available" to him, so that it can be used to pay the nursing home bill, even though he may face civil contempt proceedings or other judicial sanctions for failure to make payment to his spouse. In effect, HCFA believes that Congress intends for the support payment to be applied to the nursing home bill rather than to the maintenance of the community spouse, as the court ordered. HCFA is wrong.

Title XIX forbids HCFA—or the States—from requiring beneficiaries to make the Hobson's choice of either using all of their income to meet their own needs as a condition of Medicaid eligibility, or meeting their court-ordered support obligations and doing without medically necessary care. It is the Committee's understanding that the Social Security Administration's Program Operations Manual System (POMS) recognizes that income which must be used to make family support payments pursuant to court order or pursuant to an agreement with a District Attorney is not available for "deeming" to an SSI recipient (POMS section 00850.140). This same principle applies to Medicaid under section 1902(a)(17)(B) of the Act: income which must be used to make child or spousal support payments is not available to meet the beneficiary's own needs.

To clarify this situation, the Committee bill makes explicit that, in determining the income and resources of an individual who is in an institution, the individual shall not be considered to have available to him or her income or resources which are required to be paid undert court order for the support of the individual's spouse or child, up to the amount required by the court order. The Committee recognizes that Congress in 1984 required States to establish expedited processes for establishing and enforcing child support obligations. Under such processes, support orders generally will be awarded administratively rather than by court order. The Committee therefore intends that the term "under court order" as used in this amendment apply not only to court ordered support, but also to any other directive with the force of law, including an administrative order and an agreement with the district attorney.

The Committee amendment applies to States which had the policy or practice of disregarding such support payments in such circumstances as of July 22, 1986, without regard to whether or not the policy or practice, reflected in a State plan amendment or not, was approved by HCFA. Because the issue of support-obligated income has arisen in the context of HCFA disapprovals of State proposals to disregard support obligations of SSI-related applicants and recipients, the Committee has limited the scope of this amendment to the support obligations of institutionalized individuals in States that have already attempted to effect this policy or practice. Thus, in addition to the States that are actually implementing such a policy, this provision also applies to those States that are under court order to disregard amounts allocated for support, and those that, as of July 22, 1986, have attempted to implement a disregard fo support-obligated funds on behalf of institutionalized individuals but have been informed by HCFA, in writing or verbally, that they cannot institute such a policy or practice.

Payment for aliens under Medicaid (Sec. 4607)

The Medicaid statute does not explicitly identify whether otherwise qualified aliens are entitled to benefits. By regulation, the Secretary has limited Medicaid eligibility to otherwise eligible aliens who are lawfully admitted for permanent residence or permanently residing in the U.S. under color of law, including any alien who is lawfully present under sec. 203(a)(7) or sec. 212(d)(5) of the Immigration and Nationality Act. The Aid to Families with Dependent Children (AFDC) statute, section 402(a)(33) of the Social Security Act, and the Supplemental Security Income (SSI) statute, section 1614(a)(1)(B) of the Act, both limit eligibility for cash assistance benefits to otherwise qualified aliens who are lawfully admitted for permanent residence or otherwise permanently residing in the U.S. under color of law.

On July 14, 1986, a U.S. District Court struck down this regulation as outside the scope of the authority delegated under the Medicaid statute. *Lewis v. Gross,* No. CV-79-1740 (E.D.N.Y., July 14, 1986). The Court reasoned that Congress "knew how to impose alienage requirements on social welfare programs when it intended, and its refusal to impose such a requirement on Mediciad should be respected." Because the AFDC and SSI statutes do include explict exclusions of certain classes of aliens, the result of this decision is that otherwise qualified aliens who are eligible for Medicaid as non-cash beneficiaries—i.e., medically needy or optional categorically needy individuals—are entitled to Medicaid coverage.

In response to the Court's invitation to clarify Congressional intent, the Committee bill amends the Medicaid statute to make it explicit that Federal financial participation is not available for State expenditures for aliens who are not lawfully admitted for permanent residence or permanently residing in the U.S. under color of law. The bill also provides that nothing in the Medicaid title should be construed to require a State plan to offer coverage to aliens who are not lawfully admitted for permanent residence or otherwise permanently residing in the U.S. under color of law. The Committee intends that the Secretary and the States broadly interpret the phrase "under color of law" to include all of the categories recognized by immigration law, policy, and practice in effect at the time, including Cuban-Haitian entrants (as defined in paragraph (1) or 2(A) of section 501(e) of Public Law 96-422, as in effect on April 1, 1983).

Permitting States to offer home and community-based services to low income individuals with Acquired Immune Deficiency Syndrome (AIDS) or with AIDS-related conditions (Sec. 4611)

Under current law, the Secretary is authorized, upon application by a State, to grant a "2176" waiver allowing Federal Medicaid matching funds to be used to purchase home or community-based services to Medicaid eligible individuals who are determined to require the level of care provided in a skilled nursing facility (SNF) or an intermediate care facility (ICF), including an intermediate care facility for the mentally retarded (ICF/MR). (Section 2176 of the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35, created section 1915(c) of the Social Security Act, the source of the Secretary's 2176 waiver authority). With respect to low-income individuals who are at risk solely of inpatient hospital care, however, only ventilator-dependent individuals who, but for waivered services, would continue to receive inpatient hospital care, may be covered under a waiver.

Home and community-based services that may be provided with Federal matching payments under the waivers include case management, homemaker/home health aid, personal care, adult day health, habilitation, respite care, and such other services as the Secretary may approve, other than room and board. In order to receive a waiver, States must satisfy the Secretary that, among other things, the waiver will be budget-neutral. That is, the average annual per capita Medicaid expenditure estimated by the State for individuals receiving home- and community-based services under a waiver must not exceed the average per capita Medicaid expenditure the State reasonably estimates would have been made in the fiscal year for these individuals if the waiver had not been granted.

As of mid-July of 1986, the Centers for Disease Control (CDC) reported over 22,000 confirmed cases of Acquired Immune Deficiency Syndrome (AIDS). AIDS is a disease characterized by a collapse of the immune function and by resultant opportunistic infections and conditions, most commonly pneumocystis pneumonia and Kaposi's sarcoma. The disease was first identified in 1981 and is thought to be caused by the virus known as HTLV-III/LAV, or Human Immuniodeficiency Virus (HIV). AIDS is the most severe form of HIV infection, although a number of other AIDS-related conditions, ranging from asymptomatic HIV infection and lymphadenopathy to AIDS-Related Complex (ARC) and neurological impairments, have been identified. At this time, there is no known cure for AIDS, and the disease is thought to be terminal in all cases. On average, the time between diagnosis and death is less than 2 years.

In a June, 1986, report, the Public Health Service (PHS) estimated that by the end of 1991, more than 270,000 Americans will have been diagnosed with this disease and that 179,000 Americans will have died of it. The PHS also estimated that in that year alone, more than 145,000 cases of AIDS will require medical care. The PHS makes special note that, because of under-reporting of cases, these estimates may be as much as 20 percent below actual experience. None of these estimates include persons with AIDS-related conditions but without the fully-developed AIDS disease.

The costs of caring for AIDS patients are substantial. In an initial study, the CDC has estimated that the average number of hospital days for AIDS patients exceeds 150 days, and the average cost per patient is in excess of $140,000, exclusive of outpatient support services, tests, medications, home care, or counseling. Using this figure, the total public and private cost of health care for persons with AIDS in 1991 can be calculated to be $24 billion, or approximately 3.6 percent of the total estimated U.S. personal health care expenditures for that year.

However, in testimony presented to the Subcommittee at hearings in July and November of 1985 and in March of 1986, it has been demonstrated that it is possible to reduce substantially the total medical costs of caring for AIDS patients adequately and appropriately. In San Francisco, for example, where a range of community care is available, hospital costs have been held, on average, to $29,000 per AIDS case. Such reduced costs have been achieved through a model community-based service system that seeks to avoid costly hosptial care whenever possible.

In its June, 1986 report, the PHS recommended that such model services be made more widely available. If a continuum of hospital, home-health, hospice, and personal care were available by 1991, the PHS estimated that the average cost per patient could be reduced to $46,000 per case from its estimate of $140,000 per case. Even with such services—and their resulting savings—assumed to be in place within five years, the PHS estimated that the total public and private costs of providing health care for persons with AIDS in 1991 would be between $8 billion and $16 billion.

AIDS and its related conditions are without known therapies. Individuals with a diagnosis of AIDS are considered presumptively disabled for purposes of Supplemental Security Income (SSI). Most victims of this debilitating disease eventually lose their jobs and their employment-related health insurance. Those who impoverish themselves due to high medical expenses and loss of income can be expected to become eligible for SSI and/or Medicaid. The Committee anticipates that the Medicaid program will be responsible for paying for a significant share of the growing costs of AIDS care.

The Committee observes that Medicaid coverage is important not only for the AIDS patient, but also for providers of care. Uninsured AIDS patients pose a serious financial burden for those public and private hospitals that treat them. In the November and March hearings before the Subcommittee, testimony was received regarding the fiscal difficulties the AIDS epidemic presents for those hospitals that already serve large numbers of Medicaid and nonpaying patients.

It is the Committee's intention to assure that the Meicaid funds for AIDS care are spent in as cost-effective and appropriate a manner as possible. It is clear to the Committee that the substitution of community-based care for hospital care, where medically and socially appropriate, is essential. Witnesses before the Subcommittee stressed the need for Medicaid to finance alternatives to hospital care for AIDS patients and documented the potential savings from community services as an alternative to hospital care. Similarly, in its June, 1986 report, the PHS recommended that consortia of service delivery systems (including hospital, mental health, home health and hospice care) be developed to meet the growing needs of persons with AIDS and further recommended that model waiver programs be initiated.

The Committee bill therefore amends the current Medicaid "2176" waiver authority to permit States to offer home- and community-based services to Medicaid-eligible individuals with AIDS or with AIDS-related conditions who, but for the provision of home- and community-based services, would continue to receive inpatient hospital or nursing home care. The Committee intends that the term "AIDS-related conditions include opportunistic infections, neurological complications, and the AIDS-Related Complex (ARC), and comprise a cluster of AIDS-related conditions recognized by the PHS as a clinical manifestations of an infection by the same virus that causes AIDS. It is the Committee's expectation that the implementation of this waiver authority will encourage other jurisdictions to develop community-based services comparable to those in San Francisco.

The provision makes no other changes with regard to the 2176 waiver authority. As under current law with respect to other waiver populations, States would retain the option as to whether to request the waiver, which populations and areas of the State to target, and what non-institutional services to offer to the target population. States would also have to satisfy the Secretary that the estimated expenditures for the target population under the waiver would not exceed the estimated expenditures for the target population in the absence of the waiver. The Committee wishes to emphasize that, as with respect to other "2176" waivers, States need not demonstrate cost savings; they need only demonstrate budget neutrality. In making estimates for complying with the budget-neutrality test, States may use average per capita hospital costs for hospitalized AIDS patients in the target area, and are not required to use the per capita expenditures for all Medicaid-eligible hospital patients in that area or throughtout the State.

The Committee provision also clarifies that States are permitted to target the existing optional "case management" benefit to eligible individuals with AIDS and AIDS-related conditions in certain areas within the State. The purpose of these services is to increase beneficiary access to needed medical, social, educational, and other services. The Committee bill makes clear that this optional benefit, which can be limited to certain regions of a State or to certain covered groups, may also be targeted specifically on individuals with AIDS or AIDS-related conditions.

The Committee notes that this amendment does not expand Medicaid eligibility to new beneficiaries. It merely permits States, under conditions of budget-neutrality, to offer home and community-based care as an alternative to more costly hospital care for Medicaid-eligible patients with AIDS and AIDS-related conditions.

The Committee believes that home and community-based waivers for AIDS patients will result in substantial savings to the Medicaid program and the Federal government. The San Francisco experience shows that new services in the community reduce rather than expand the cost per case for AIDS patients. Although the Congressional Budget Office has estimated that this provision will not increase Federal outlays, the Committee expects its implementation to save Federal and State Medicaid dollars.

Permitting States to offer home- and community-based services to low-income individuals with chronic mental illness (Sec. 4612)

Under current law, the Secretary is authorized to waive certain Medicaid requirements in order to enable the States to make home- and community-based services available to Medicaid-eligible individuals who are at risk of skilled nursing facility or intermediate care facility services. This authority, often referred to as the "2176 waiver," can be exercised only where the Secretary determines that the average per capita Medicaid cost of providing waivered services to the target population would not exceed the average per capital Medicaid cost in the absence of the waiver.

In 1985, the Secretary reported to the Congress that, as of December 31, 1984, a total of 86 waivers had been approved under this authority; however, less than 5 covered the chronically mentally ill who are eligible for Medicaid. This, in the view of the Committee, is unfortunate. A number of well-designed studies have shown that model community-based programs for the chronically mentally ill are feasible to implement, preferred by patients, lead to improved patient functioning, and are affordable. Yet the incentives in current Medicaid reimbursement policies are to use expensive general hospital psychiatric services rather than alternative care settings. There is reason to believe that, by using Medicaid funds to purchase out-of-hospital services for the chronically mentally ill, States could substantially reduce acute hospital costs for this population by reducing lengths of stay and readmissions.

To facilitate State efforts in this regard, the Committee bill expands the scope of the "2176" waiver authority to include those individuals who, but for the provision of home- and community-based services, would continue to receive inpatient hospital (or nursing home) services because they have chronic mental illness, the treatment of which is covered under the State's Medicaid plan. The hospital services referred to include both mental health services provided by general hospitals and those provided by psychiatric hospitals. In making estimates for determining whether a waiver proposal will meet the budget neutrality test in section 1915(c)(2)(D) of the Act, States may use the average per capita hospital care expenditures for chronically mentally ill individuals, and are not required to use the per capita expenditures for all Medicaid-eligible hospital patients.

The Committee bill specifically provides that a State would be able to offer under such a waiver services appropriate to the chronically mentally ill, such as day treatment and other partial hospitalization services, psychosocial rehabilitation services, and clinic services. The Committee wishes to emphasize that the waivered clinic services need not be provided in the facility itself; they may be provided by the clinic staff at another site, such as a shelter for the homeless.

As an alternative to, or in conjunction with, a "2176" waiver, some States may prefer simply to target case management services on the Medicaid-eligible chronically mentally ill. The purpose of these services is to increase beneficiary access to needed medical, social, educational, and other services. The Committee bill makes clear that this optional benefit, which can be limited to certain regions of a State or to certain covered groups, may also be targeted specifically on individuals with chronic mental illness.

Waiver authority for the chronically mentally ill demonstration program (Sec. 4613)

Under current law, States cannot enter into any contracts with providers to deliver services to Medicaid beneficiaries on a prepayment or other risk basis unless the requirements of section 1903(m) of the Act are met. These requirements, which are intended to protect the patients from underservicing and poor quality care and the program from financial abuse, include a provision limiting the number of enrolled Medicaid (or Medicare) beneficiaries to 75 percent of a contractor's total prepaid enrollment. This prevents

States from entering into capitation arrangements with all-medicaid prepaid plans.

Early this year, the Robert Wood Johnson Foundation and the Department of Housing and Urban Development initiated a Program for the Chronically Mentally Ill under which the Foundation will provide $28 million in grants and low interest loans, and the Department will provide rent subsidies, to develop community-wide systems of care and rehabilitation and to expand housing options for the chronically mentally ill over a 5-year period. Eight of the nation's 60 largest urban centers will be selected to participate on a competitive basis. Grants of up to $2.5 million each, and low-interest loans of up to $1 million each, will be made to support the development of community-wide mental health authorities that offer a range of services. The Social Security Administration will work with grantees to improve the disability determination process.

Among the applications for this Program are proposals to enroll, on a risk basis, those chronically mentally ill who are eligible for Medicaid into the delivery systems organized by the grantee mental health authorities. For example, the Philadelphia county mental health authority proposes to contract with the State on a prospective per capita basis for all Medicaid mental health services in that city. Social workers and nurses working in 60 teams, each with a psychiatrist paid on a per capita basis, will provide 24-hour-per-day continuing care for the most seriously impaired mentally ill, most of whom are high users of general hospital care for acute psychiatric crisis. The current Medicaid requirements relating to prepayment arrangements may create a barrier to the implementation of such a proposal, should the Foundation and HUD find it otherwise qualified to fund.

While the Committee is extremely reluctant to alter the current Medicaid prepayment protections, it recognizes that this public-private initiative has the potential to improve both the quality and cost-effectiveness of the care available to the chronically mentally ill who are eligible for Medicaid. The Committee bill therefore creates a special waiver authority to enable the States, at their option, to enroll the Medicaid-eligible chronically mentally ill residing in one of the grantee areas in the participating mental health authority on a capitation basis. In order to grant such a waiver, the Secretary must determine (1) that the program is receiving funding under the Robert Wood Johnson Foundation/HUD Program for the Chronically Mentally Ill, (2) that the State has provided satisfactory assurances that, with respect to Medicaid-funded mental health services, the demonstration will be budget neutral, and (3) that Medicaid-eligible chronically mentally ill individuals will not experience any reduction or limitation in the amount, duration, or scope of services to which they are entitled under the State's Medicaid plan. The Committee wishes to stress that, if a grantee is defunded by the Program for the Chronically Mentally Ill, the Secretary is to terminate any waivers granted under this authority.

The Secretary is authorized to waive the requirements of statewideness, comparability, and freedom of choice of provider as needed to implement this demonstration, but only with respect to the provision of mental health services. With respect to medical services covered under the State plan, current Medicaid protections would apply to the eligible individuals affected; thus, they could continue to receive their regular medical care from the providers of their choice. The Committee bill also authorizes the Secretary to waive two of the current prepayment rules at section 1903(m): the requirement that the mental health authority be an HMO for Medical purposes, and the 75 percent ceiling on Medicaid/Medicare enrollment. All other current provisions, such as the requirement that capitation rates be actuarially sound and the enrollees be able to disenroll upon one month's notice without cause, would be applicable.

Among the services that grantees could offer under this waiver authority are case management for the chronically mentally ill, habilitation services, day treatment or other partial hospitalization services, residential services (other than room and board), psychosocial rehabilitation services, clinic services (whether or not furnished in a facility), and such other services as the Secretary may approve. Waivers would be granted for an initial term of 3 years, and could be renewed for an additional 2 years. A report on the cost, accessibility, utilization, and quality of services provided under these waivers is due to the Congress on January 1, 1993. The Committee views this demonstration as an excellent opportunity to learn how to improve the design of the Medicaid program with respect to the chronically mentally ill and looks forward to receiving the Secretary's evaluation.

The Committee wishes to emphasize that the Secretary may not require that waivers under this section actually save money. It is sufficient if the average per capita Medicaid expenditure estimated by the State for mental health services to the waiver population does not exceed 100 percent of the average per capita expenditure that would have been made for mental health services, including inpatient care provided in a general or psychiatric hospital, in the absence of the waiver. As with the existing "2176" waivers, the Secretary may not require that the actual total expenditures for such a waiver cannot exceed the approved estimates for such services.

Continuation of "Case-Managed Medical Care for Nursing Home Patients" Demonstration Project (Sec. 4614)

The Massachusetts Department of Public Welfare is currently operating a Medicaid/Medicare demonstration project designed to reduce inappropriate and costly hospitalizations and to improve the quality of primary care provided to nursing home patients. Under the "Case-Managed Medical Care for Nursing Home Patients" demonstration, the State reimburses primary care visits to Medicaid-eligible nursing home patients by nurse practitioners and physician assistants, diverting these patients from unnecessary hospitalizations and visits to hospital outpatient clinics and emergency rooms. The demonstration's HCFA-approved budget for this year projects Federal savings of $2.3 million.

To enable the State to implement this demonstration, the Secretary has waived certain Medicaid (and Medicare) requirements from July 1, 1983, through June 30, 1987. An evaluation of the project, conducted jointly by HCFA and the RAND Corporation, is now underway. The Committee bill requires the Secretary, upon application by the State, to extend the demonstration through June 30, 1989, to allow time for completion of the evaluation.

Holding States harmless in fiscal year 1987 against a decrease in the Federal medical assistance percentage (Sec. 4621)

The Federal Medicaid matching rate to any given State is based on the average per capita income of the State and the U.S. for the three most recent calendar years for which satisfactory data are available. Prior to the enactment of the Consolidated Omnibus Budget Reconciliation Act, P.L. 99-272, this matching rate was updated every two years. Section 9528 of COBRA requires an annual, rather than biennial, updating of the rate, effective beginning in FY 1987. The COBRA conferees expressed their intention that "the committees of jurisdiction will explore ways to relieve the hardship that may be suffered by the States that will receive substantially less in matching payments as a result of this provision."

The annual update mandated by COBRA decreases the Federal Medicaid matching rate in 13 States, resulting in a loss of Federal Medicaid funds vis-a-vis what they would have received under the rate applicable under previous law. These States are: Arizona, Florida, Georgia, Maine, Minnesota, Missouri, New Hampshire, North Carolina, Ohio, Rhode Island, South Carolina, South Dakota, and Virginia. In the view of the Committee, it would be inequitable to impose financial hardship on these States and their Medicaid beneficiaries. The Committee bill therefore provides that section 9528 of COBRA shall not apply to these adversely impacted States during FY 1987; their Federal matching rates will therefore remain unchanged from those applicable in FY 1986.

Independent quality review of HMO services (Sec. 4631)

Current HCFA regulations require entities which serve Medicaid beneficiaries on a prepayment or other basis must have internal quality assurance systems meeting certain specifications. There is no regulatory or statutory requirement that an external organization, independent of both the prepaid plan and the State Medicaid agency, monitor the quality of services rendered to Medicaid patients. The Medicare statute, in contrast, requires that, effective January 1, 1987, the quality of services delivered on a risk basis by Health Maintenance Organizations (HMO's) and Competitive Medical Plans are subject to review by Professional Review Organizations (PRO's).

In the view of the Committee, the need for independent, external monitoring of the quality of services provided by HMO's, Health Insuring Organizations (HIO's), and other prepaid plans is as compelling in the Medicaid programs as it is in the Medicare program. The Committee notes that the Arizona Health Care Cost Containment System (AHCCCS) demonstration project, under which all care to Medicaid beneficiaries is delivered on a prepayment basis, decided to contract with a private accreditation organization to undertake annual medical audits of all the participating prepaid plans after serious concerns have been raised regarding the quality of care being delivered.

The Committee bill requires that States provide for an independent, external review of the quality of services provided or arranged by each HMO, HIO, or other prepaid plan with which the State has entered into a risk-based contract. The review must be conducted on an annual basis, and it must be specific to the quality of services provided to Medicaid enrollees. A State may select either a PRO or a private accreditation organization for this purpose; it may not, however, use any of its own agencies to fulfill this requirement. Federal matching payments would of course be available for State expenditures for this purpose. The results of these reviews must be made available, on request, to the Secretary, the Inspector General, and the Comptroller General. The requirement is effective July 1, 1987.

Clarification of flexibility of State utilization review systems (Sec. 4632)

Under current law, States may, at their option, implement second surgical opinion programs or inpatient hospital preadmission review programs. According to HCFA, 42 State program currently have some type of second surgical opinion program, most of which are voluntary. Mandatory programs, under which Medciad does not reimburse a physician for performing a covered surgical procedure without a second opinion, have been adopted in 10 States (Massachusetts, Michigan, Minnesota, Missouri, New Jersey, Oregon, Tennessee, Virginia, Wisconsin, and Washington), and other (New York) are in the process of establishing them.

Recently, HCFA published a proposed rule that would require every State to have in place, by January 1, 1987, a mandatory second surgical opinion program conforming to HCFA specifications or, in the alternative, an existing utilization review plan that prevents unnecessary surgery, is cost-effective, and meets HCFA's approval. 51 Fed. Reg. 21933 (June 17, 1986). Citing a 10-year-old report by this Committee's Subcommittee on Oversight and Investigations that in turn relied on 1974 national data, HCFA simply assumes that, in 1986, the amount of unnecessary surgery in the Medicaid programs in those States that do not already have mandatory second surgical opinion program is so high as to justify the imposition of a national mandate.

There are only two problems with this proposed rule: the basic policy premise is unsupported by current evidence, and HCFA does not have the statutory authority to impose such a requirement. The Committee urges the Secretary to withdraw this ill-advised and unauthorized proposal.

In the view of the Committee, HCFA has not documented the extent of unnecessary surgery in those 8 States that do not have either a voluntary or mandatory second surgical opinion program. Nor has HCFA explained why it would be cost-effective for States that now have voluntary programs to institute mandatory programs instead. Under current law, every State has for years had the option to institute a mandatory second surgical opinion program, yet only 10 States have done so, while most of the others, according to HCFA's own data, have opted for voluntary programs. It seems to the Committee ironic that HCFA, which so often stresses the need for flexibility in Federal standards to enable the

States to address their own unique circumstances, now seeks to impose on the states a mandatory review program using national standards—all in the absence of any data on the extent of unnecessary surgery in the States without mandatory programs.

The Committee bill makes clear the Secretary does not have, and never had, the authority to require that States operate second surgical opinion programs, whether voluntary or mandatory, or that States operate inpatient hospital preadmission review programs. Those States that are currently operating mandatory or voluntary second surgical opinion programs could continue to do so. Similarly, States that do not now have such programs will continue to be free to implement them, at their option. Finally, those States that do not want to implement such programs, whether they feel it is not cost-effective or because they prefer other utilization control measures, will remain free not to so.

The Committee is unwilling to allow HCFA to impose this regulatory burden on the States, participating physicians, and beneficiaries in the absence of methodologically sound, up-to-date, information as to the extent of unnecessary surgery in the Medicaid program. The Committee bill therefore requires that the Secretary report to the Congress, by January 1992, on the extent of unnecessary surgery and the identity of those procedures that should be targeted for review. The Committee is also concerned that, in some States or for some procedures, the problem is not so much overutilization of surgery as underutilization, due to the low level of physician participation in the program. The Committee bill requires that the Secretary's report speak to this issue as well.

More specifically, the Secretary is required, for each State in a representative sample of States, to describe (1) the high-volume or high-cost procedures used by Medicaid patients; (2) payment rates and aggregate spending for those procedures; (3) the extent of geographic variation in the rate of performance of such procedures; (4) the rate at which the procedure is performed on Medicaid patients compared to private patients; and (5) the number of physicans willing and qualified to perform second opinions. It is the Committee's intent that in determining high cost procedures, the Secretary look at those procedures that are high cost on a per unit basis as well as a procedure that, while not costly on an individual basis, result in a high level of Medicaid expenditures because of the frequency with which they are performed.

In conducting this study, the Secretary is to select a representative sample of States for data collection and analysis. At least 6 States, none of which operate mandatory second surgical opinion programs, should be included in the analysis. The States selected should be geographically representative and permit analysis of variations between urban and rural areas. For comparative purposes, and with appropriate controls, the utilization experience in those States that do operate mandatory programs should be compared to that of the study States to assess the impact of second surgical opinion programs on use of high volume or high cost procedures.

The Committee is concerned that the implementation of mandatory second opinion surgical programs may in some States have the effect of reducing access to needed care for Medicaid beneficiaries by discouraging physicians from participating in the program because of additional paperwork and low payment rates. The Committee is also concerned that if second opinion programs are mandatory for some surgical procedures, beneficiaries may be denied treatment because physicians qualified and willing to render the second opinions are unavailable. The Committee bill therefore requires the Secretary to determine the number of qualified physicians who perform the procedures identified and who would be willing to render a second opinion at the Medicaid payment rate. The Committee recognized that this provision may require the Secretary to survey the physicans in the sample States, but this information seems to the Committee essential if an informed policy judgment on mandating second opinion programs is to be made.

The Committee is concerned not only about overuse of services by Medicaid beneficiaries, but also by underuse. The Secretary's report is therefore to identify those procedures and services which appear to be underused by the Medicaid population. Specifically, Medicaid utilization rates are to be compared to the utilization rates of privately-insured patients of comparable age and sex. The report should also compare utilization rates for procedures between the States in the study to identify procedures that are high volume in one State and low volume in another. This information can be unduly restricting access to care for some Medicaid beneficiaries.

Clarification of flexibility for State Medicaid payment systems for inpatient services (Sec. 4633)

Under current law, States must find, and give the Secretary adequate assurances that, the rates of payment for covered inpatient hospital services are "reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities." This standard, enacted in section 2173 of the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35, replaced the previous requirement that States use the Medicare "reasonable cost" payment methodolgy unless they obtained approval from the Secretary to use an alternate reimbursement method. The purpose of this statutory change was to give the States greater flexibility, within the contours of the Medicaid statute, in establishing payment rates and methodologies.

Recently, HCFA published a proposed rule which would limit payments for inpatient hospital services or long-term care facility services to hospitals, SNF's, ICF's, and ICF's/MR to the amount that can reasonably be estimated would have been paid for the services under Medicare reimbursement principles in effect at the time the services were furnished. 51 Fed. Reg. 5728 (Feb. 18, 1986). HCFA contends that this proposal is consistent with the intent of sections 1902(a)(13)(A) and 1902(a)(30) of the Act. HCFA is incorrect.

There is no reference to Medicare reimbursement principles in the Medicaid statute with respect to payment for inpatient services for hospitals, SNF's, ICF's, or ICF's/MR, and there has not been any such reference since the enactment of OBRA. The reason for this is quite simple. The Committee has intended, and does intend, that Medicare principles of reimbursement or payment levels not be applied as a limit on Medicaid payments for inpatient services. The Medicaid statute contains a separate set of reimbursement principles designed to accommodate the needs of both the States and the Federal government in administering the Medicaid program. Medicare payment requirements have neither relevance nor applicability to the Medicaid program. Of course, States have the option to use Medicare payment methodologies and rates if they so choose; however, the Secretary has no authority whatsoever to require them to do so, or to impose Medicare-related limits of any kind on their payment rates.

It has come to the Committee's attention that HCFA has recently attempted to disallow a new Medicaid prospective payment plan for inpatient hospital services adopted by the State of Georgia. HCFA is apparently maintaining that the State's slightly higher payment limits for certian hospitals serving a significantly disproportionate number of low-income patients would cause the State's Medicaid payments to exceed the level of expenditures if payments were calculated under the increase that would have been permitted if Federal Medicare principles of reimbursement were applied. This HCFA position is particularly disturbing to the Committee, not merely because it has no basis in statute, but because the Medicaid statute explicitly requires that, in setting payment rates for inpatient hospital services, States must take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs. Not surprisingly, the State of Georgia is appealing HCFA's disapproval.

It is evident to the Committee that, if this proposed rule is implemented, there will be a great deal of senseless, costly litigation involving Georgia and, eventually, other States, which the Department must inevitably lose, since it has no statutory authority for the imposition of such limits. The Committee therefore urges the Secretary to withdraw the proposed rule. To further clarify Congressional intent on this matter, the Committee bill makes explicit that nothing in the Medicaid statute shall be construed as authorizing the Secretary to limit the amount of payment that may be made with respect to inpatient hospital, SNF, ICF, or ICF/MR services. This includes any limitation, including that in the February 18 proposed rule, relating to the amount that can reasonably be estimated would have been paid for the services under Medicare reimbursement principles.

Financial disclosure requirements for HMO's (Sec. 4634)

Current law requires participating providers to disclose information concerning ownership and control and related party transactions. More particularly, all entities furnishing services under Medicaid must disclose to the State the identity of each person with a control interest or with an ownership interest of 5 percent or more. In addition, participating entities must disclose, upon request by the State or the Secretary, full and complete information as to the ownership of a subcontractor with whom the entity has had business transactions in excess of $25,000 per year, and as to any significant business transactions with such subcontractor.

The purpose of these disclosure requirements is to protect the financial integrity of the program, and to assure that Federal health care dollars are not diverted to uses other than the delivery of services. This has special applicability with regard to HMO's, Health Insuring Organizations (HIO's), and other prepaid health plans participating in Medicaid. As the GAO noted in a recent report to the Subcommittee, "Related-party transactions within these corporate structures can enable health plans to divert capitation funds from their intended purpose—the provision of health care. They can lead to unnecessary administrative costs and excessive profits. Underservicing of the Medicaid population may occur if capitation payments are used to pay unnecessary administrative costs or excessive profits to related parties rather than to provide medical care services." *Arizona Medicaid: Nondisclosure of Ownership Information by Health Plans,* GAO/HRD-86-10 (November, 1985) at page 10.

During the course of its review of the Arizona Health Care Cost Containment System (AHCCCS), the GAO found widespread noncompliance with the disclosure requirements. One of the participating prepaid plans that did not disclose, Health Care Providers of Arizona, Inc., was found to be tied to 10 other firms in which its owners had a controlling interest. Two physicians with a combined interest of two-thirds ownership in the plan wholly owned 9 of these firms, 7 of which received payments for the plan for various medical services. In April, 1985, after 30 months in AHCCCS, the State terminated its contract with Health Care Providers for failing to meet outstanding liabilities. At that time, it was the third largest plan in the AHCCCS program with about 4,000 Federally-funded Medicaid enrollees. GAO estimates that the plan received roughly $4 million in Federal Medicaid funds before its financial collapse. The GAO concluded that, due to noncompliance with disclosure requirements, "HCFA and the State do not know whether capitation funds are being appropriately used to provide health care services for Arizona's Medicaid population."

It is the firm intent of the Committee to avoid the recurrence of such a debacle. The GAO has made a number of suggestions for tightening the current statutory disclosure requirements in which the Committee finds great merit. Accordingly, the Committee bill requires that HCFA give prior approval to all contracts (or renewals) with HMO's, HIO's, or prepaid plans under which total Federal and State expenditures will exceed $100,000. This requirement had, prior to 1983, been included in HCFA regulations, but was deleted as part of the Office of Management and Budget's "regulatory reforms." The GAO believes that restoration of this prior approval requirement might avert nondisclosure problems like those that occurred in Arizona.

The Committee bill further requires that each HMO, HIO, or prepaid plan entering into a risk-based contract with Medicaid must disclose to the State a description of all transactions (other than the payment of salaries to employees) between the plan and any party in interest. (This does not apply to Federally-qualified HMO's participating in Medicaid, as these organizations are already required to make such disclosure under the Public Health Service Act). The requirement extends to transactions that occur before as well as after the contract is entered into. The disclosure must occur prior to the initial approval of a contract, and periodically thereafter, as specified by the Secretary in regulations, including prior to any renewal or extension of the contract. The purpose of this requirement is to assure that the State (and, upon request, the Secretary, the Inspector General, and the GAO), is aware of all the parties in interest and the nature of the transactions between the contracting plan and the related parties. This information will assist the State, and the Secretary, in determining whether to approve or renew a risk-based contract. The Committee expects that the Secretary will withhold approval of a contract in any case where the ownership and control arrangements, and the nature and scope of the related party transactions, suggest that Federal Medicaid funds are likely to be diverted or otherwise imprudently spent.

Delegation to Inspector General of authority over State Medicaid fraud control units (Sec. 4635)

Currently, Federal administrative responsibility, including grants management, for the State Medicaid Fraud Control Units rests with the Office of the Inspector General (OIG) in the Department of Health and Human Services. This responsibility was originally placed in the Health Care Financing Administration (HCFA), but on April 15, 1979, was transferred to the OIG.

In the view of the Committee, the appropriate locus of oversight responsibility for the State Fraud Control Units, the functions of which are investigatory and prosecutorial, is the OIG, the functions of which are investigatory and prosecutorial. Accordingly, the Committee bill directs the Secretary to delegate (or continue to delegate) his administrative responsibilities vis-a-vis the State Medicaid Fraud Control Units to the Inspector General.

COBRA technical corrections and clarifications relating to the Medicaid Program (Sec. 4636)

Section 9506 of COBRA, P.L. 99-272, provides that, for purposes of Medicaid eligibility, the distributions from certain Medicaid qualifying trusts are to be considered available to the individual establishing the trust whether or not actually made. It has come to the Committee's attention that this provision could arguably result in the loss of Medicaid eligibility by about 1200 mentally retarded individuals residing in intermediate care facilities for the mentally retarded (ICFs/MR) in Massachusetts. The Committee is informed that grantor trusts were established for these clients beginning in 1980 to facilitate their eventual return to the community. The potential disqualification of these individuals from Medicaid eligibility was neither foreseen nor intended by the Committee when it first reported this provision as part of H.R. 3101, the Medicare and Medicaid Budget Reconciliation Amendments of 1985. The Committee bill clarifies that section 9506 does not apply to any trust or initial trust decree established prior to April 7, 1986, solely for the benefit of a mentally retarded individual who resides in an ICF/MR.

Section 9517(c) of COBRA clarified that where a Health Insuring Organization (HIO) which has entered into a prepayment contract with a State does anything more than merely process claims for payment, it is subject to the same regulatory requirements as those to which any HMO or prepaid plan is subject under Medicaid law. The provision is effective for HIO's that first become operational on or after January 1, 1986, subject to the following exception. In the case of those HIO's which first become operational on or after January 1, 1986, but for which the Secretary had granted a 1915(b) waiver before that date, all of the Medicaid regulatory requirements apply except those (1) limiting Medicaid beneficiary enrollment to 75 percent of total enrollment and (2) allowing beneficiaries to disenroll upon 1 month's notice without cause.

On June 27, 1986, the HCFA Administrator notified the State of Pennsylvania that the amendments made by section 9517(c)(2) did not apply to HealthPASS waiver program in Philadelphia. HealthPASS is an HIO that is responsible for the provision of services to approximately 100,000 Medicaid beneficiaries in Philadelphia through arrangements with hospitals, physicians, and other providers of services. According to the General Accounting Office, beneficiary enrollment in HealthPASS began on January 20, 1986, the waiver took effect on February 3, 1986, and services began to be provided through HealthPASS on March 1, 1986. The statutory exception to the January 1, 1986 effective date of section 9517(c) was crafted specifically to accommodate HealthPASS and two other HIO's which had had their section 1915(b) waivers approved but had not begun enrolling patients before January 1, 1986. Nonetheless, HCFA determined that HealthPASS is not subject to section 9517(c), effectively exempting it from basic Medicaid regulatory requirements, including those regarding organizational qualifications, financial and ownership disclosure, quality assurance methods, and actuarial soundness.

HCFA erred. In the view of the Committee, there is no justification for exempting HealthPASS (or the two other HIO's which are protected by the exception clause) from the basic Medicaid regulatory requirements for prepaid plans. These requirements are designed to protect to both the financial integrity of the program and the beneficiaries. The Committee bill therefore clarifies that, for purposes of applying section 9517(c), an HIO is not considered to be operational until the date on which it first enrolls patients. Thus, the amendments made by section 9517(c) apply, and always applied, to HealthPASS. The Committee bill also adds the Hartford Health Network, Inc., to the group of HIO's that is exempt from the requirements (1) limiting Medicaid enrollment to 75 percent and (2) allowing Medicaid beneficiaries to disenroll on one month's notice. As in the case of HealthPASS, the Hartford Health Network is subject to all of the other regulatory requirements applicable to prepaid plans under current law.

Payment for certain long-term care patients in hospitals (Sec. 4637)

Current law provides that a State may reimburse hospitals for inpatient services rendered to Medicaid-eligible patients who no longer need acute hospital care, who do need skilled nursing facility (SNF) care, but for whom such services are unavailable due to shortage of nursing home beds in the community. The rate of payment for such patients awaiting long-term care placement is the estimated State-wide average rate per patient day for SNF services rather than the hospital's inpatient acute care rate, with one exception. The State may choose to pay the higher inpatient hospital rate for such inappropriately-placed patients if there are no excess beds in the hospital and in the area where the hospital is located. Under HCFA regulations, a hospital or area has excess beds if its occupancy rate is under 80 percent.

The Committee recognizes that reducing hospital capacity will, over time, generate savings in aggregate Medicaid expenditures for hospital services. The Committee believes that, if New York wishes to use the incentive of higher payment rates for long-term care patients to induce hospitals to reduce their bed capacity, the Secretary should have the authority to—and should—allow it to do so, so long as the State's policies have no adverse impact on Federal Medicaid expenditures.

The Committee bill therefore provides that New York, which has substantial excess hospital bed capacity, may pay the inpatient rate for long-term care Medicaid patients in hospitals if either the facility or the region has an occupancy rate of 80 percent of more, but only if the Secretary of HHS determines that a sufficient number of hospital beds have been decertified in the State either on a Statewide or on a regional basis to reduce the aggregate Medicaid payments to hospitals by an amount equal to or greater than the aggregate amount by which Medicaid payments will increase as a result of the higher payment rates for long-term care patients. The Committee believes that, in making this determination, the Secretary should consider that this requirement has been met if a sufficient number of hospital beds has been decertified to ensure that a region has obtained an occupancy of at least 80 percent. Thus, if the Secretary finds that a sufficient number of hospital beds has been decertified in the State, then a hospital could receive a higher payment for patients awaiting long-term care placements if the hospital has an occupancy rate of 80 percent or more, or if the region has an occupancy rate of 80 percent or more.

This provision applies only to New York, which, the Committee understands, has proposed a reimbursement methodology that incorporates these bed decertification incentives. The Committee expects the Secretary to make every effort to accommodate the State's request to implement this provision.

MATERNAL AND CHILD HEALTH

Authorization of additional funds (Sec. 4641)

Under current law, the authorization level for the Maternal and Child Health (MCH) Block Grant (Title V of the Social Security Act) is set at a permanent level of $478 million. The Committee bill would increase this authorization limit to $553 million for FY 1987, $557 million for FY 1988, and $561 million for FY 1989. In addition, the bill would establish a three-year Federal set-aside within the Block Grant of $7 million for FY 1987, $7.5 million for FY 1988, and $8 million for FY 1989 to provide funds for screening for sickle-cell anemia and other newborn genetic disorders. The monies from this set-aside would revert back into the Block Grant at the end of this three-year period.

Created in 1981, the MCH Block Grant provides funds to the States for the provision of maternal and child health services, including prenatal care, primary health care services for infants and children, and services for children with special health care needs.

Because of the great need and demand for these services, appropriations for the programs have always been set at the maximum amount permitted under the law.

Over the last several years, however, this limitation has proven to be insufficient to meet the ever-growing need for maternal and child health services, especially pregnancy-related services and primary health care services for young children. The unavailability of these services in certain parts of the country has resulted in the continuation of unacceptably high infant mortality rates in those areas. The unavailability of services has also meant that great numbers of children—particularly those from low-income families—still lack access to basic preventive and primary health care services that can help reduce the incidence, severity, and cost of illness and disease later on in life. The Committee bill would alleviate these problems by increasing the funding that could be distributed to the States for maternal and child health services under the Block Grant.

In recognition of the recent work sponsored by the National Institutes of Health (NIH) on the diagnosis and treatment of sickle-cell anemia, the Committee bill would also establish a three-year Federal set-aside for programs to screen for this disease as well as other newborn genetic disorders. According to this study, proper diagnosis and follow-up care during the first few months of life can result in the prevention of most of the almost 200 deaths that occur among black infants with the disease each year. In response to these findings, the NIH study group recommended that all infants at risk of sickle-cell anemia be screened at birth for the disease. Although the report did not make specific findings with respect to the cost-effectiveness of sickle-cell screening programs, the savings that could be achieved from such programs would undoubtedly be significant. The average costs for a sickle-cell screen and follow-up care are approximately $200, while the costs for treating stroke and other debilitating conditions that can result from this disease are far greater. This conclusion is supported by the work of the General Accounting Office (GAO), which has estimated that screening all infants in the United States for genetic diseases and disorders would save more than $20 million in treatment costs for every dollar spent on screening.

The three-year Federal set-aside that would be created under the Committee bill would provide the funds that are needed to implement the recommendations of the NIH researchers. Currently, only nine States have developed complete programs for the diagnosis and treatment of sickle-cell anemia; twelve others have some limited screening programs in place. These funds would allow States, and other entities which now lack the resources, to establish or enhance screening programs for sickle-cell anemia and other genetic disorders and diseases. In addition, they would provide the Department of Health and Human Services with the resources to gather and disseminate information and data about the number of children who are afflicted with genetic diseases, their follow-up care and development, and the availability of screening and treatment programs throughout the country.

Maternal and Child Health and Adoption Clearinghouse (Sec. 4642)

The Committee bill would require the Secretary of Health and Human Services to establish a National Adoption Information Clearinghouse which would collect, compile, and maintain data and information on all aspects of infant adoption and adoption of children with special needs. In addition, the Clearinghouse would be responsible for developing, maintaining, and disseminating a directory of information on the various aspects of adoption, including statistical data; State adoption laws; and information on licensed adoption agencies, adoption education and training programs, and centers, shelters, and residences that serve pregnant women. The sole purpose of the National Clearinghouse would be to provide information on adoption to all those who voluntarily seek such information; no services relating to adoption or to other pregnancy options would be offered by or through the Clearinghouse.

HEARINGS

The Committee's Subcommittee on Health and Environment has held 10 hearings on the provisions found in the Committee Print:

On July 17, 1986, the Subcommittee held a hearing on various deficit reduction proposals that would affect Part B of the Medicare program (print not yet available). Testimony was received from 16 witnesses, including representatives of the Administration and several health care organizations and associations whose members would be affected by the proposals.

On May 12, 1986, the Subcommittee held a hearing on the implementation of the National Organ Transplant Act of 1984 (P.L. 98-507) and the recommendations of the Task Force on Organ Transplantation (print not yet available). Testimony was received from 11 witnesses, including members of the Task Force and physicians involved with organ transplantations.

On March 26, 1986, the Subcommittee held a hearing on the financial burden of health care on the elderly (print not yet available) Testimony was received from 4 witnesses, including the Congressional Budget Office and researchers in the area of health care financing for the elderly.

On March 5, 1986, the Subcommittee held a hearing on the financing of Non-Hospital Care for Individuals with Acquired Immune Deficiency Syndrome (AIDS) (print not yet available). Testimony was received from 6 witnesses, including the Administration, families of AIDS patients, and representatives of organizations that are providing non-hospital care to AIDS patients and that are studying the costs of such care.

On January 27, 1986, the Subcommittee held a field hearing in Palm Harbor, Florida on Alzheimer's disease and related disorders (Ser. No. 99-71). Testimony was received from 18 witnesses and was submitted for the record by 1 individual. Witnesses included families of Alzheimer's patients and representatives of organizations that provide service to both Alzheimer's patients and their families.

On November 1, 1985, the Subcommittee held a hearing on the cost of treatment for Acquired Immune Deficiency (AIDS) and the question of who is going to pay those costs (Ser. No. 99-45). Testimony was received from 12 witnesses and was submitted for the record by 2 Members of the House of Representatives. Witnesses included representatives of the Administration, associations whose members pay for AIDS-related services, and institutions which provide care to AIDS patients.

On July 22, 1985, the Subcommittee held a hearing on research and treatment of Acquired Immune Deficiency (AIDS) (Ser. No. 99-45). Testimony was received from 8 witnesses and was submitted for the record by 1 individual. Witnesses included representatives of the Administration and institutions that provide treatment services to AIDS patients.

On July 17, 1985, the Subcommittee held a hearing on various deficit reduction proposals that would affect Part B of the Medicare program (Ser. No. 99-265 [Part 1]). Testimony was received from 16 witnesses including representatives of the Administration and several health care organizations and associations whose members would be affected by the proposals.

On April 3, 1985, the Subcommittee held a hearing on Medicare and Medicaid support for medical education (Ser. No. 99-19). Testimony was received from 15 witnesses, including various agencies and organizations that are involved with medical education and the training of physicians.

On January 27, 1984, the Subcommittee held a field hearing on Medicare vision care reform in Baltimore, Maryland (Ser. No. 98-141). Testimony was received from 9 witnesses and was submitted for the record by 3 organizations. Witnesses included representatives from organizations that are involved with the provision of vision care.

COMMITTEE CONSIDERATION

On July 23, 1986, the Committee met in open session and, by voice vote, a quorum being present, ordered transmitted to the Committee on the Budget, a Committee print, as amended, containing amendments relating to Medicare, Medicaid, and the Maternal and Child Health Block Grant program, in accordance with section 310 of the Congressional Budget Act.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(1)(3)(A) of Rule XI of the rules of the House of Representatives, the Committee made oversight findings that are reflected in this legislative report.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that the amendments made by this Print will reduce budget outlays for fiscal years 1987, 1988, and 1989, by an amount in excess of that estimated by the Congressional Budget Office. The Committee notes that, according to CBO, this bill would reduce Federal Medicare outlays by a total of $1.083 billion over the next three years.

The Committee takes exception to the CBO estimate that section 4601 of the Print, relating to the expansion of Medicaid coverage for pregnant women and infants up to age 1 with incomes below the Federal poverty line, will recrease Federal outlays by $175 million over the next three years. It is the Committee's understanding that CBO did not adjust for the savings in reduced intensive care and long-term institutional costs that can reasonably be expected from the reduction in the incidence of low birthweight births among the target population that greater access to prenatal care should produce. These savings have been conservatively estimated to be in the range of $3 for every $1 invested in prenatal care for this disadvantaged, high-risk population. The Committee to Study the Prevention of Low Birthweight of the Institute of Medicine of the National Academy of Sciences, "Preventing Low Birthweight" (1985), at 212-237. In the Committee's view, its proposal may well initially result in net outlays, but these costs will in subsequent years be more than offset by savings of the magnitude estimated by the IOM Committee.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC., July 28, 1986.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimates of the provisions in Subtitles F and G in the House Committee on Energy and Commerce reconciliation package. The estimates show both budget authority and outlays effects.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER, *Director.*

PRELIMINARY SUBTITLE F AND G ENERGY AND COMMERCE RECONCILIATION PROVISIONS IN MILLIONS OF DOLLARS

Sections	Fiscal year—			3-year total
	1987	1988	1989	
SUBTITLE F—MEDICARE PROVISIONS				
Part 1—Provisions Relating to Parts A and B				
4501—Direct costs of graduate medical education:				
Budget authority	0	0	0	0
Outlays	0	0	−6	−6
4502—Payment limits for home health services:				
Budget authority	0	−5	−5	−10
Outlays	30	15	20	65
4503—Establishment of research program:				
Budget authority	3	4	4	11
Outlays	6	7	8	21
4504—Group purchasing vendor agreements:				
Budget authority	0	0	0	0
Outlays	0	0	0	0
4505—Civil monetary penalties:				
Budget authority	0	0	0	0
Outlays	0	0	0	0

PRELIMINARY SUBTITLE F AND G ENERGY AND COMMERCE RECONCILIATION PROVISIONS IN MILLIONS OF DOLLARS—Continued

Sections	Fiscal year— 1987	1988	1989	3-year total
4506—Payment rates for ESRD services (contains cyclcsporian):				
Budget authority	−75	−66	−66	−207
Outlays	−75	−65	−65	−205
4507—ESRD Network Program Administration				
Budget authority	0	0	0	0
Outlays	0	0	0	0
4508—Organ transplant protocols and stanuards:				
Budget authority	0	0	0	0
Outlays	0	0	0	0
4509—COBRA technical corrections:				
Budget authority	0	0	0	0
Outlays	0	0	0	0
4510—50 percent Nonmedicare enrollment for HMO's and CMP's:				
Budget authority	0	0	0	0
Outlays	0	0	0	0
Subtotal for part 1:				
Budget authority	−72	−67	−67	−206
Outlays	−39	−43	−43	−125
Part 2—Provisions Relating to Part B				
4521—Coverage of vision care:				
Budget authority	37	62	72	171
Outlays	35	60	70	165
4522—Coverage of occupational therapy:				
Budget authority	16	16	20	52
Outlays	15	15	20	50
4523—Physician assistant services:				
Budget authority	0	0	0	0
Outlays	0	0	0	0
4524—Nurse anesthetists services:				
Budget authority	0	0	0	0
Outlays	0	0	0	0
4525—Payment for physician services:				
Budget authority	0	−80	−105	−185
Outlays	0	−70	−105	−175
4526—Inherent reasonableness authority:				
Budget authority	0	0	0	0
Outlays	0	0	0	0
4527—Payment for cataract surgery:				
Budget authority	−170	−230	−260	−660
Outlays	−150	−220	−245	−615
4528—Payment for clinical lab tests:				
Budget authority	−20	−75	−95	−190
Outlays	−10	−70	−90	−170
4529—Payment for parenteral and enteral nutrition supplies:				
Budget authority	−37	−37	−42	−116
Outlays	−35	−35	−40	−110
4530—Payment for oxygen therapy services:				
Budget authority	−43	−64	−68	−175
Outlays	−40	−60	−65	−165
4531—Physician Payment Review Commission:				
Budget authority	0	0	0	0
Outlays	0	0	0	0
4532—Changing Medicare appeal rights:				
Budget authority	5	10	10	25
Outlays	4	8	8	20

PRELIMINARY SUBTITLE F AND G ENERGY AND COMMERCE RECONCILIATION PROVISIONS IN MILLIONS OF DOLLARS—Continued

Sections	Fiscal year—			3-year total
	1987	1988	1989	
4533—Alzheimer's demonstrations:				
Budget authority	14	14	14	42
Outlays	14	14	14	42
Subtotal for part 2:				
Budget authority	−198	−384	−454	−1,036
Outlays	−167	−358	−433	−958
Subtotal for Subtitle F:				
Budget authority	−270	−451	−521	−1,242
Outlays	−206	−401	−476	−1,083
4601—Poor pregnant women and infants optional coverage:				
Budget authority	15	75	85	175
Outlays	15	75	85	175
4602—Elderly and disabled poor, all Medicaid benefits:				
Budget authority	30	100	140	270
Outlays	30	100	140	270
4603—Poor Medicare beneficiaries, Medicare cost-sharing expenses:				
Budget authority	15	70	100	185
Outlays	15	70	100	185
4621—Hold-harmless provision for med assistance percent for Medicaid:				
Budget authority	50	0	0	50
Outlays	50	0	0	50
4631—Contracts for quality review of HMO's:				
Budget authority	(1)	(1)	(1)	(1)
Outlays	(1)	(1)	(1)	(1)
Subtotal for subtitle G:				
Budget authority	110	245	325	680
Outlays	110	245	325	680
Total for subtitles F and G direct spending:				
Budget authority	−160	−206	−196	−562
Outlays	−96	−156	−151	−403
Authorizations				
4641—Authorization of funds, maternal and child health:				
Authorization	75	79	83	237
Outlay	42	68	78	188
4642—National maternal and child health clearinghouse:				
Authorization	(1)	(1)	(1)	(1)
Outlay	(1)	(1)	(1)	(1)
Total for subtitles F and G authorizations:				
Authorization	75	79	83	237
Outlay	42	68	78	188
Total for subtitles F and G:				
Budget authority/authorization	−85	−127	−113	−325
Outlay	−54	−88	−73	−215

[1] Effect of provision is less then $500,000.

INFLATION IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee states that the bill as reported will have no inflationary impact, but instead will contribute to a reduction in inflationary pressures by lowering projected Federal spending for medical care.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SOCIAL SECURITY ACT

* * * * * * *

TITLE XI—GENERAL PROVISIONS AND PEER REVIEW

TABLE OF CONTENTS OF TITLE

PART A—GENERAL PROVISIONS

* * * * * * *

EXCLUSION OF CERTAIN INDIVIDUALS CONVICTED OF MEDICARE- OR MEDCAID-RELATED CRIMES

SEC. 1128. (a) * * *

* * * * * * *

(f) For purposes of subsection (a), a physician or other individual is considered to have been convicted of a criminal offense—

(1) when a judgment of conviction has been entered against the physician or individual by a Federal, State, or local court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged;

(2) when there has been a finding of guilt against the physician or individual by a Federal, State, or local court;

(3) when a plea of guilty or nolo contendere by the physician or individual has been accepted by a Federal, State, or local court; and

(4) when the physician or individual has entered into participation in a first offender or other program where judgment of conviction has been withheld.

CIVIL MONETARY PENALTIES

SEC. 1128A. (a) Any person (including an organization, agency, or other entity) that—

(1) * * *

* * * * * * *

(3) In a proceeding under subsection (a) which—

(A) is against an individual who has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal crime charging fraud or false statements, and

(B) involves the same transaction as in the criminal action,

the individual is estopped from denying the essential elements of the criminal offense.

(4) The official conducting a hearing under this section may sanction a person, including any party or attorney, for failing to comply with an order or procedure, failing to defend an action, or other misconduct as would interfere with the speedy, orderly, or fair conduct of the hearing. Such sanction shall reasonably relate to the severity and nature of the failure or misconduct. Such sanction may include—

(A) in the case of refusal to provide or permit discovery, drawing negative factual inferences or treating such refusal as an admission by deeming the matter, or certain facts, to be established,

(B) prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense,

(C) striking pleadings, in whole or in part,

(D) staying the proceedings,

(E) dismissal of the action,

(F) entering a default judgment,

(G) ordering the party or attorney to pay attorneys' fees and other costs caused by the failure or misconduct, and

(H) refusing to consider any motion or other action which is not filed in a timely manner.

* * * * * * *

HOSPITAL PROTOCOLS FOR ORGAN PROCUREMENT AND STANDARDS FOR ORGAN PROCUREMENT AGENCIES

SEC. 1138. (a) The Secretary shall provide that no hospital may participate in the programs under title XVIII and XIX unless the hospital establishes protocols for encouraging organ and tissue donation by identifying and assisting potential human organ and tissue donors in a manner that (1) assures that families of potential donors are made aware of the option of organ or tissue donation and their option to decline, and (2) encourages discretion and sensitivity to the circumstances, views, and beliefs of families.

(b) The Secretary shall provide that no payment may be made under title XVIII or XIX with respect to costs in procuring organs attributable to payments made to an organ procurement agency which—

(1) is not a qualified organ procurement organization (described in section 371(b) of the Public Health Service Act) or meets the standards to be such an organization, and

(2) has not been certified (and recertified not less often than once every two years) as meeting the standards for certification of organ procurement agencies established by the Association of Independent Organ Procurement Agencies.

* * * * * * *

TITLE XVIII—HEALTH INSURANCE FOR THE AGED AND DISABLED

* * * * * * *

PART B—SUPPLEMENTARY MEDICAL INSURANCE BENEFITS FOR THE AGED AND DISABLED

* * * * * * *

SCOPE OF BENEFITS

SEC. 1832. (a) The benefits provided to an individual by the insurance program established by this part shall consist of—

(1) entitlement to have payment made to him or on his behalf (subject to the provisions of this part) for medical and other health services, except those described in subparagraphs (B) and (D) of paragraph (2); and

(2) entitlement to have payment made on his behalf (subject to the provisions of this part) for—

(A) home health services;

(B) medical and other health services furnished by a provider of services or by others under arrangement with them made by a provider of services, excluding—

(i) physician services except where furnished by—

(I) a resident or intern of a hospital, or

(II) a physician to a patient in a hospital which has a teaching program approved as specified in paragraph (6) of section 1861(b) (including services in conjunction with the teaching programs of such hospital whether or not such patient is an inpatient of such hospital) where the conditions specified in paragraph (7) of such section are met, **[**and**]**

(ii) services for which payment may be made pursuant to section 1835(b)(2); **[**and**]**, *and*

(iii) services of a registered nurse anesthetist; and

[(C) outpatient physical therapy services, other than services to which the next to last sentence of section 1861(p) applies;**]**

(C) outpatient physical therapy services (other than services to which the second sentence of section 1861(p) applies) and outpatient occupational therapy services (other than services to which such sentence applies through the operation of section 1861(g));

* * * * * * *

PAYMENT OF BENEFITS

SEC. 1833. (a) Except as provided in section 1876, and subject to the succeeding provisions of this section, there shall be paid from the Federal Supplementary Medical Insurance Trust Fund, in the case of each individual who is covered under the insurance program established by this part and incurs expenses for services with respect to which benefits are payable under this part, amounts equal to—

(1) in the case of services described in section 1832(a)(1)–80 percent of the reasonable charges for the services; except that (A) an organization which provides medical and other health services (or arranges for their availability) on a prepayment

basis may elect to be paid 80 percent of the reasonable cost of services for which payment may be made under this part on behalf of individuals enrolled in such organization in lieu of 80 percent of the reasonable charges for such services if the organization undertakes to charge such individuals no more than 20 percent of such reasonable cost plus any amounts payable by them as a result of subsection (b), (B) with respect to items and services described in section 1861(s)(10)(A), the amounts paid shall be 100 percent of the reasonable charges for such items and services, (C) with respect to expenses incurred for those physicians' services for which payment may be made under this part that are described in section 1862(a)(4), the amounts paid shall be subject to such limitations as may be prescribed by regulations, (D) with respect to clinical diagnostic laboratory tests for which payment is made under this part (i) on the basis of a fee schedule under subsection (h)(1), the amount paid shall be equal to 80 percent (or 100 percent, in the case of such tests for which payment is made on the basis of an assignment described in section 1842(b)(3)(B)(ii), under the procedure described in section 1870(f)(1), or for tests furnished in connection with obtaining a second opinion required under section 1164(c)(2) (or a third opinion, if the second opinion was in disagreement with the first opinion) of the lesser of the amount determined under such fee schedule; the limitation amount for that test determined under subsection (h)(4)(B), or the amount of the charges billed for the tests, or (ii) on the basis of a negotiated rate established under subsection (h)(6), the amount paid shall be equal to 100 percent of such negotiated rate, (E) with respect to services furnished to individuals who have been determined to have end stage renal disease, the amounts paid shall be determined subject to the provisions of section 1881, (F) with respect to expenses incurred for services described in subsection (i)(3) under the conditions specified in such subsection, the amounts paid shall be the reasonable charge for such services, **[**and**]** (G) with respect to items and services (other than clinical diagnostic laboratory tests) furnished in connection with obtaining a second opinion required under section 1164(c)(2) (or a third opinion, if the second opinion was in disagreement with the first opinion), the amounts paid shall be 100 percent of the reasonable charges for such items and services; *(H) with respect to services of a registered nurse anesthetist under section 1861(s)(11), the amounts paid shall be 80 percent of the reasonable charges for such services established by the Secretary in accordance with subsection (l), and (I) with respect to oxygen therapy services (as defined in subsection (m)(6)), the amount paid shall be equal to 80 percent of the amount determined under the monthly prospective fee schedule under subsection (l),*

(2) in the case of services described in section 1832(a)(2) (except those services described in subparagraphs (D), (E), and (F) of such section and unless otherwise specified in section 1881)—

(A) * * *

* * * * * * *

(B) with respect to other items and services (except those described in subparagraph (C) [or (D)] *(D), or (E)* of this paragraph and except as may be provided in section 1886)—

(i) the lesser of—

(I) the reasonable cost of such services, as determined under section 1861(v), or

(II) the customary charges with respect to such services,

less the amount a provider may charge as described in clause (ii) of section 1866(a)(2)(A), but in no case may the payment for such other services exceed 80 percent of such reasonable cost, or

(ii) if such services are furnished by a public provider of services, or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this clause), free of charge or at nominal charges to the public, 80 percent of the amount determined in accordance with section 1814(b)(2), or

(iii) if (and for so long as) the conditions described in section 1814(b)(3) are met, the amounts determined under the reimbursement system described in such section,

(C) with respect to services described in the second sentence of section 1861(p), 80 percent of the reasonable charges for such services; [and]

(D) with respect to clinical diagnostic laboratory tests for which payment is made under this part (i) on the basis of a fee schedule determined under subsection (h)(1), the amount paid shall be equal to 80 percent (or 100 percent, in the case of such tests for which payment is made on the basis of an assignment described in section 1842(b)(3)(B)(ii), under the procedure described in section 1870(f)(1), or to a provider having an agreement under section 1866) of the lesser of the amount determined under such fee schedule or the amount of the charges billed for the tests, or (ii) on the basis of a negotiated rate established under subsection (h)(6), the amount paid shall be equal to 100 percent of such negotiated rate for such rates; *and*

(E) with respect to oxygen therapy services, 80 percent of the amount determined under the monthly prospective fee schedule under subsection (n);

* * * * * * *

(g) In the case of services described in the [next to last] *second* sentence of section 1861(p), with respect to expenses incurred in any calendar year, no more than $500 shall be considered as incurred expenses for purposes of subsections (a) and (b). *In the case of outpatient occupational therapy services which are described in* *the second sentence of section 1861(p) through the operation of section 1861(g), with respect to expenses incurred in any calendar year, no more than $500 shall be considered as incurred expenses for purposes of subsections (a) and (b).*

(h)(1)(A) The Secretary shall establish fee schedules for clinical diagnostic laboratory tests for which payment is made under this part, other than such tests performed by a provider of services for an inpatient of such provider.

(B) In the case of clinical diagnostic laboratory tests performed by a physician or a laboratory [(other than tests performed by a hospital laboratory for outpatients of such hospital)], the fee schedules established under subparagraph (A) shall be established on a regional, statewide, or carrier service area basis (as the Secretary may determine to be appropriate) for tests furnished [during the period beginning on July 1, 1984, and ending on June 30, 1987. For such tests furnished on or after July 1, 1987, the fee schedule shall be established on a nationwide basis.] *on or after July 1, 1984.*

[(C) In the case of clinical diagnostic laboratory tests performed by a hospital laboratory for outpatients of such hospital, the fee schedules established under subparagraph (A) shall be established on a regional, statewide, or carrier service area basis (as the Secretary may determine to be appropriate) for tests furnished during the period beginning on July 1, 1984, and ending on June 30, 1987. For such tests furnished on or after July 1, 1987, the fee schedule under subparagraph (A) shall not apply with respect to clinical diagnostic laboratory tests performed by a hospital laboratory for outpatients of such hospital.]

(2) except as provided in paragraph (4), the Secretary shall set the fee schedules at 60 percent [(or, in the case of a test performed by a hospital laboratory for outpatients of such hospital, 62 percent)] of the prevailing charge level determined pursuant to the third and fourth sentences of section 1842(b)(3) for similar clinical diagnostic laboratory tests for the applicable region, Sate, or area (or, effective December 31, 1987, for the United States) for the 12-month period beginning July 1, 1984, adjusted annually (to become effective on January 1 of each year) by a percentage increase or decrease equal to the percentage increase or decrease in the Consumer Price Index for All Urban Consumers (United States city average), and subject to such other adjustments as the Secretary determines are justified by technological changes. The Secretary may make further adjustments or exceptions to the fee schedules to assure adequate reimbursement of (A) emergency laboratory tests needed for the provision of bona fide emergency services, and (B) certain low volume high-cost tests where highly sophisticated equipment or extremely skilled personnel are necessary to assure quality.

(3) In addition to the amounts provided under the fee schedules, the Secretary shall provide for and establish *(A)* a nominal fee to cover the appropriate costs in collecting the sample on which a clinical diagnostic laboratory test was performed and for which payment is made under this part, except that not more than one such fee may be provided under this paragraph with respect to samples collected in the same encounter *,and (B) a fee to cover the*

transportation and personnel expenses for trained personnel to travel to the location of an individual to collect the sample, except that such a fee may be provided only with respect to an individual who is homebound or an inpatient in an inpatient facility (other than a hospital).

* * * * * * *

(l)(1) With respect to services of a registered nurse anesthetist under section 1861(s)(11), the reasonable charge shall be an amount determined by the Secretary to be consistent with efficient and high quality anesthesia services, taking into account the prevailing rate for such services, but modified to the extent necessary to comply with the requirements of paragraph (2).

(2) In establishing the reasonable charge for those services, the Secretary shall adjust the reasonable charge to the extent necessary to ensure that the total amount which will be paid under this title for those services in any fiscal year (as estimated by the Secretary) will not exceed the total amount which would be paid under this title for those services in the fiscal year if the services were included as inpatient hospital services and payment for such services was made under part A in the same manner as payment was made in fiscal year 1986, adjusted to take into account changes in prices and technology relating to the administration of anesthesia.

(3) In establishing the reasonable charge for medical direction of services of a registered nurse anesthetist under section 1861(s)(11), the Secretary shall adjust the reasonable charge to the extent necessary to ensure that the total amount which will be paid under this title for such medical direction and such services in any fiscal year (as estimated by the Secretary) will not exceed the total amount which would have been paid but for the enactment of the amendments made by section 4524 of the Budget Reconciliation Act of 1986.

(4)(A) If an adjustment under paragraph (3) results in a reduction in the reasonable charge for a physicians' service and a nonparticipating physician furnishes the service to an individual entitled to benefits under this part—

(i) the physician may not charge the individual more than 125 percent of the adjusted prevailing charge for the service, and

(ii) if the physician charges more than such amount, the physician shall refund to the individual (and shall be liable to the individual for) any amounts received in excess of such amount.

(B) If a physician knowingly and willfully imposes charges or fails to make refunds in violation of subparagraph (A), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).

(M)(1) The Secretary shall establish monthly capitation fee schedules, on a regional, statewide, or carrier service area basis (as the Secretary may determine to be appropriate) for oxygen therapy services for which payment is made under this part.

(2)(A) Under each such schedule, payment shall be made under this part on the basis of the number of units of oxygen prescribed for a patient per month without regard to the actual number of units of oxygen so used.

(B) The Secretary shall require verification of the initial prescription requirements and any subsequent changes therein by laboratory data or such other means deemed appropriate by the Secretary.

(C) No payment may be made under this part for oxygen therapy services (i) other than to a provider of services with an agreement in effect under section 1866 or on an assignment-related basis (as defined in section 1842(i)(8)) or (ii) furnished more than one year after the date of the prescription for such services.

(D) No payment may be made under this part for oxygen therapy services furnished pursuant to a prescription of a physician who has a significant ownership interest in, or a significant financial or contractual relationship with, the entity furnishing the oxygen therapy services, except that this prohibition shall not apply with respect to an entity which is the sole supplier (as determined by the Secretary) of oxygen therapy services in a community.

(E) With respect to payment for oxygen therapy services, the Secretary shall provide that—

(i) if payment is not made on or before the 22nd calendar day after the date on which a clean claim is received, interest on the claim shall be paid at the rate used for purposes of section 3902(a) of title 31, United States Code (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made;

(ii) within 22 calendar days after the date a claim for payment under this part is received, the carrier shall notify the entity submitting the claim of any defect or impropriety in the claim (including the lack of any required substantiating documentation) or circumstance requiring special treatment that prevents the claim from being treated as a clean claim and prevents timely payment from being made;

(iii) if notice required under clause (ii) is not provided on a timely basis with respect to a claim and payment is subsequently made on the claim, interest on the amount determined to be payable shall be made (at the rate described in clause (i)) for the period beginning on the day after the required notice date and ending on the date on which payment is made or the date the notice is provided, whichever date is earlier; and

(iv) the carrier will be reimbursed for the amount of interest paid under this subparagraph from amounts made available for Federal administrative costs to carry out this part.

In this subparagraph, the term "clean claim" means a claim which meets the requirements of this title for payment under this part and the term "carrier" refers to the appropriate carrier with a contract under section 1842.

(3) Subject to paragrpah (4), the Secretary shall set such fee schedules at 100 percent of the reasonable charge level determined (pursuant to section 1842(b)(3)) for the 12-month period ending June 30, 1986, for oxygen therapy services (excluding any part of such charges relating to the purchase or rental of equipment) furnished in the applicable region, State, or area. Such fee schedules shall be adjusted annually (to become effective January 1 of each year, beginning with 1987) by a percentage increase or decrease equal to the percentage increase or decrease in the Consumer Price Index for All Urban Con-

sumers (all items; United States city average), and subject to such other adjustments as the Secretary determines are justified by technological changes. The Secretary shall also base such fee schedule on the lowest cost medically appropriate means of delivery.

(4) The Secretary shall provide for a percentage increase (established by the Secretary) in the fee schedule amounts for oxygen therapy services furnished through a portable device. In order to assure the availability of oxygen therapy services for individuals consuming small amounts of oxygen, the Secretay shall provide for a minimum monthly amount for the furnishing of oxygen therapy services.

(5) Nothing in this subsection shall be construed as requiring the use of any particular type of equipment or device.

(6) In this subsection and subsection (a), "oxygen therapy services" means durable medical equipment, asccessories, and supplies for the provision of oxygen therapy in a patient's home.

PROCEDURE FOR PAYMENT OF CLAIMS OF PROVIDERS OF SERVICES

SEC. 1835. (a) Except as provided in subsections (b), (c), and (e), payment for services described in section 1832(a)(2) furnished an individual may be made only to providers of services which are eligible therefor under section 1866(a), and only if—

(1) written request, signed by such individual, except in cases in which the Secretary finds it impracticable for the individual to do so, is filed for such payment in such form, in such manner and by such person or persons as the Secretary may by regulation prescribe, no later than the close of the period of 3 calendar years following the year in which such services are furnished (deeming any services furnished in the last 3 calendar months of any calendar year to have been furnished in the succeeding calendar year) except that, where the Secretary deems that efficient administration so requires, such period may be reduced to not less than 1 calendar year; and

(2) a physician certifies (and recertifies, where such services are furnished over a period of time, in such cases, with such frequency, and accompanied by such supporting material appropriate to the case involved, as may be provided by regulations) that—

(A) in the case of home health services (i) such services are or were required because the individiual is or was confined to his home (except when receiving items and services referred to in section 1861(m)(7)) and needs or needed skilled nursing care on an intermittent basis or physical or speech therapy or, in the case of an individual who has been furnished home health services based on such a need and who no longer has such a need for such care or therapy, continues or continued to need occupational therapy, (ii) a plan for furnishing such services to such individual has been established and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician;

(B) in the case of medical and other health services except services described in subparagraphs (B), (C), and (D), or section 1861(s)(2), such services are or were medically required;

(C) in the case of outpatient physical therapy services *or outpatient occupational therapy services,* (i) such services are or were required because the individual needed physical therapy services *or occupational therapy services, respectively,* (ii) a plan for furnishing such services has been established by a physician or by the qualified physical therapist *or qualified occupational therapist, respectively,* providing such services and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician;

(D) in the case of outpatient speech pathology services, (i) such services are or were required because the individual needed speech pathology services, (ii) a plan for furnishing such services has been established by a physician or by the speech pathologist providing such sevices and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician; and

(E) in the case of comprehensive outpatient rehabilitation facility services, (i) such services are or were required because the individual needed skilled rehabilitation services, (ii) a plan for furnishing such services has been established and is periodically reviewed by a physician, and (iii) such sevices are or were furnished while the individual is or was under the care of a physician.

For purposes of this section, the term "provider of services" shall include a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1861(p)(4)(A) *(or meets the requirements of such section through the opration of section 1861(g)),* or if, in the case of a public health agency, such agency meets the requirements of section 1861(p)(4)(B), but only with respect to the furnishing of outpatient physical therapy services (as therein defined) *or (through the operation of section 1861(g)) with respect to the furnishing of outpatient occupational therapy services.*

* * * * * * *

USE OF CARRIERS FOR ADMINISTRATION OF BENEFITS

SEC. 1842. (a) * * *

* * * * * * *

(b)(1) * * *

* * * * * * *

(3) Each such contract shall provide that the carrier—

(A) * * *

* * * * * * *

(C) will establish and maintain procedures pursuant to which an individual enrolled under this part will be granted an opportunity for a fair hearing by the carrier, in any case where the amount in controversy is [$100 or more] *at least $100, but not more than $500,* when requests for payment under this part with respect to services furnished him are denied or are not acted upon with reasonable promptness or when the amount of such payment is in controversy;

* * * * * * *

(F) will take such action as may be necessary to assure that where payment under this part for a service rendered is on a charge basis, such payment shall be determined on the basis of the charge that is determined in accordance with this section on the basis of customary and prevailing charge levels in effect at the time the service was rendered or, in the case of services rendered more than 12 months before the year (ending on September 30) in which the bill is submitted or request for payment is made, on the basis of such levels in effect for the 12-month period preceding such year; and shall contain such other terms and conditions not inconsistent with this section as the Secretary may find necessary or appropriate. In determining the reasonable charge for services for purposes of this paragraph, there shall be taken into consideration the customary charges for similar services generally made by the physician or other person furnishing such services, as well as the prevailing charges in the locality for similar services. No charge may be determined to be reasonable in the case of bills submitted or requests for payment made under this part after December 31, 1970, if it exceeds the higher of (i) the prevailing charge recognized by the carrier and found acceptable by the Secretary for similar services in the same locality in administering this part on December 31, 1970, or (ii) the prevailing charge level that, on the basis of statistical data and methodology acceptable to the Secretary, would cover 75 percent of the customary charges made for similar services in the same locality during the 12-month period ending on the March 31 last preceding the start of the twelve-month period (beginning October 1 of each year) in which the service is rendered. In the case of physician services the prevailing charge level determined for purposes of clause (ii) of the preceding sentence for any twelve-month period (beginning after June 30, 1973) specified in clause (ii) of such sentence may not exceed (in the aggregate) the level determined under such clause for the fiscal year ending June 30, 1973, except to the extent that the Secretary finds, on the basis of appropriate economic index data, that such higher level is justified by economic changes. With respect to power-operated wheelchairs for which payment may be made in accordance with section 1861(s)(6), charges determined to be reasonable may not exceed the lowest charge at which power-operated wheelchairs are available in the locality. In the case of medical services, supplies, and equipment (including equipment servicing) that, in the judgment of the Secretary, do not generally vary significantly in quality from one supplier to another, the charges incurred after December 31, 1972, determined to be reasonable may not exceed the lowest charge levels at which such services, supplies, and equipment are widely and consistently available in a locality except to the extent and under the circumstances specified by the Secretary. The requirement in subparagraph (B) that a bill be submitted or request for payment be made by the close of the following calendar year shall not apply if (I) failure to submit the bill or request the payment by the close of such year is due to the error or misrepresentation of an officer, employee, fiscal intermediary, carrier, or agent of the Department of Health and Human Services performing functions under this title and acting within the scope of his or its authority, and (II) the bill is submitted or the payment is requested promptly after such error or misrepresentation is eliminated or corrected. Notwithstanding the provisions of the third and fourth sentences preceding this sentence, the prevailing charge level in the case of a physican service in a particular locality determined pursuant to such third and fourth sentences for the twelve-month period beginning on October 1 in any calendar year after 1974 shall, if lower than the prevailing charge level for the fiscal year ending June 30, 1975, in the case of a similar physican service in the same locality by reason of the application of economic index data, be raised to such prevailing charge level for the fiscal year ending June 30, 1985. The amount of any charges for outpatient services which shall be considered reasonable shall be subject to the limitations established by regulations issued by the Secretary pursuant to section 1861(v)(l)(K), and in determining the reasonable charge for such sevices, the Secretary may limit such reasonable charge to a percentage of the amount of the prevailing charge for similar services furnished in a physician's office, taking into account the extent to which overhead costs associated with such outpatient services have been included in the reasonable cost or charge of the facility. *With respect to services described in section 1861(s)(2)(K) (relating to a physician assistant acting under the supervision of a physician), the prevailing charges shall not exceed 90 percent of the prevailing charges applicable with respect to the physician's performance of the services.*

(4)(A)(i) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the 15-month period beginning July 1, 1984, the Secretary shall not set any level higher than the same level as was set for the 12-month period beginning July 1, 1983.

(ii)(I) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the 8-month period beginning May 1, 1986, by a physician who is not a participating physician (as defined in subsection (h)(1)) at the time of furnishing the services, the Secretary shall not set any level higher than the same level as was set for the 12-month period beginning July 1, 1983.

(II) In determining the prevailing charge levels under the fourth sentence of paragraph (3) for physicians' services furnished during the 8-month period beginning May 1, 1986, by a physician who is a participating physician (as defined in subsection (h)(1)) at the time of furnishing the services, the Secretary shall permit an additional one percentage point increase in the increase otherwise permitted under that sentence.

(III) In determining the prevailing charge levels under the fourth sentence of paragraph (3) for physicians' services furnished on or after January 1, 1987, by a participating physician, the Secretary

shall treat the additional 1 percent increase permitted on May 1, 1986, under subclause (II), as having been justified by economic changes.

(iii) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during a 12-month period beginning on or after January 1, 1987, by a physician who is not a participating physician (as defined in subsection (h)(1)) at the time of furnishing the services, the Secretary shall not set any level higher than the same level as was set for services during the previous calendar year (without regard to clause (ii)(II)) for physicians who were participating physicians during that year.

(iv) For physicians' services furnished on or after January 1, 1987, for which payment is not made on an assignment-related basis, for purposes of the fourth sentence of paragraph (3), the increase that is justified under the index described in that sentence for 1987 is 1 percent.

(D)(i) In determining the customary charges for physicians' services furnished during the 8-month period beginning May 1, 1986, or the 12-month period beginning January 1, 1987, by a physician who was not a participating physician (as defined in subsection (h)(1)) on September 30, 1985, the Secretary shall not recognize increases in actual charges for services furnished during the 15-month period beginning on July 1, 1984, above the level of the physician's actual charges billed in the 3-month period ending on June 30, 1984.

(ii) In determining the customary charges for physicians' services furnished during the 12-month period beginning January 1, 1987, by a physician who is not a participating physician (as defined in subsection (h)(1)) on April 30, 1986, the Secretary shall not recognize increases in actual charges for services furnished during the 7-month period beginning on October 1, 1985, above the level of the physician's actual charges billed in the 3-month period ending on June 30, 1984.

(iii) In determining the customary charges for physicians' services furnished during the 12-month period beginning January 1, 1987, or January 1, 1988, by a physician who is not a participating physician (as defined in subsection (h)(1)) on December 31, 1986, the Secretary shall not recognize increases in actual charges for services furnished during the 8-month period beginning on May 1, 1986, above the level of the physician's actual charges billed during the 3-month period ending on June 30, 1984.

(iv) In determining the customary charges for physicians' services furnished during 1988 and 1989 by a physician, if the physician was a nonparticipating physician in 1987, the Secretary shall not recognize any amount of such charges in 1987 that exceed the limit imposed under subsection (j)(1)(C).

* * * * * * *

(6) No payment under this part for a service provided to any individual shall (except as provided in section 1870) be made to anyone other than such individual or (pursuant to an assignment described in subparagraph (B)(ii) of paragraph (3)) the physician or other person who provided the service, except that *(A)* payment may be made **[**(A)(i)**]** *(i)* to the employer of such physician or other person

if such physician or other person is required as a condition of his employment to turn over his fee for such service to his employer, or (ii) (where the service was provided in a hospital, clinic, or other facility) to the facility in which the service was provided if there is a contractual arrangement between such physician or other person and such facility under which such facility submits the bill for such service, [or] *(B) payment may be made* (B) to an entity (i) which provides coverage of the services under a health benefits plan, but only to the extent that payment is not made under this part, (ii) which has paid the person who provided the service an amount (including the amount payable under this part) which that person has accepted as payment in full for the service, and (iii) to which the individual has agreed in writing that payment may be made under this part. No payment which under the preceding sentence may be made directly to the physician or other person providing the service involved (pursuant to an assignment described in subparagraph (B)(ii) of paragraph (3)) shall be made to anyone else under a reassignment or power of attorney (except to an employer or facility as described in clause (A) of such sentence); but nothing in this subsection shall be construed (i) to prevent the making of such a payment in accordance with an assignment from the individual to whom the service was provided or a reassignment from the physician or other person providing such service if such assignment or reassignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or (ii) to preclude an agent of the physician or other person providing the service from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for or in connection with the billing or collection of payments due such physician or other person under this title is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment, *and (C) in the case of services described in section 1861(s)(2)(K) where payment is made on an assignment-related basis, payment shall be made to the employer of the physician assitant involved.*

* * * * * * *

(8) *(A)* The Secretary by regulation shall—

[(A)] *(i)* describe the factors to be used in determining the cases (of particular items or services) in which the application of this subsection results in the determination of a reasonable charge that, by reason of its grossly excessive or grossly deficient amount, is not inherently reasonable, and

[(B)] *(ii)* provide in those cases for the factors that will be considered in establishing a reasonable charge that is realistic and equitable.

(B) The Secretary may provide for an increase or decrease in the reasonable charge otherwise recognized under this section with respect to a specific physicians' service, if the Secretary has made specific findings with respect to that service in accordance with the criteria set forth in subparagraph (A) and with the succeeding provisions of this paragraph.

(C)(i) In applying subparagraph (A), the Secretary may compare—

(I) the charges and resource costs for related procedures,

(II) charges and resource costs for the procedure over a period of time,

(III) charges for a procedure in different geographic areas, and

(IV) the charges and allowed payments for a procedure under this part and by other payors.

(ii) An adjustment under subparagraph (B) on the basis of a comparison of the prevailing charges in different localities may be made only if the Secretary determines that the prevailing charge allowed in one locality is grossly out of line with prevailing charges allowed in other localities after accounting for differences in practice costs.

(iii) In this subparagraph, "resource costs" include factors such as the time required to provide a procedure (including pre-procedure evaluation and post-procedure followup), the complexity of the procedure, the training required to perform the procedure, and the risk involved in the procedure.

(D) In determining whether to adjust payment rates under subparagraph (B), the Secretary shall consider—

(i) the potential impacts on quality, access, and beneficiary liability of the adjustment,

(ii) likely effects on assignment rates, reasonable charge reductions on unassigned claims, and participation rates of physicians,

(iii) the proportion of such procedures for which payment is available under this part, and

(iv) the prevailing charges of other third-party payors for the procedure.

(E)(i) Before making an adjustment under subparagraph (B), the Secretary shall—

(I) publish notice of the proposed adjustment, which shall contain a summary of the study data and an explanation of the basis for the proposed adjustment, and

(II) provide a period of at least 60 days during which interested parties may comment on the proposed adjustment.

(ii) Before publishing a notice of proposed adjustment under clause (i)(I), the Secretary shall consult with the Physician Payment Review Commission and shall provide the Commission an opportunity to review and comment on the proposal.

(iii) An adjustment under subparagraph (B) shall only take effect only after publication of a final notice by the Secretary. In such notice the Secretary shall explain the factors and data that were taken into consideration in making the adjustment and shall respond to any comments made by the Physician Payment Review Commission.

(F)(i) If an adjustment under subparagraph (B) results in a reduction in the reasonable charge for a physicians' service and a nonparticipating physician furnishes the service to an individual entitled to benefits under this part—

(I) the physician may not charge the individual more than 125 percent of the adjusted prevailing charge for the service, and

(II) if the physician charges more than such amount, the physician shall refund to the individual (and shall be liable to the individual for) any amounts received in excess of such amount.

(ii) If a physician knowingly and willfully imposes charges or fails to make refunds in violation of subparagraph (A), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).

(9)*(A)* In providing payment for cataract eyeglasses and cataract contact lenses, and professional services relating to them, under this part, each carrier shall—

(A) provide for separate determinations of the payment amount for the eyeglasses and lenses and of the payment amount for the professional services of a physician (as defined in section 186(r)), and

(B) not recognize as reasonable for such eyeglasses and lenses more than such amount as the Secretary establishes in guidelines relating to the inherent reasonableness of charges for such eyeglasses and lenses.

(B) In determining the reasonable charge under paragraph (3) for cataract surgery with intraoccular lens implantation, the prevailing charge for such surgery shall not be recognized to the extent it exceeds 110 percent of the prevailing charge recognized for such surgery without intraoccular lens implantation.

(C) In determining the reasonable charge under paragraph (3) for cataract surgery anesthesia, the Secretary shall not recognize more than 4 base units (as used for purposes of determining payment for anesthesia services as of the date of the enactment of this subparagraph) or equivalent amounts.

* * * * * * *

(h)(1) Any physician or supplier may voluntarily enter into an agreement with the Secretary to become a participating physician or supplier. For purposes of this section, the term "participating physician or supplier" means a physician or supplier (excluding any provider of services) who, before the beginning of any year beginning with 1984, enters into an agreement with the Secretary which provides that such physician or supplier will accept payment under this part on an assignment for all items and services furnished to individuals enrolled under this part during such year. In the case of a newly licensed physician or a physician who begins a practice in a new area, or in the case of a new supplier who begins a new business, or in such similar cases as the Secretary may specify, such physician or supplier may enter into such an agreement after the beginning of a year, for items and services furnished during the remainder of the year. *For purposes of this section, the term "participating physician" refers, with respect to the furnishing of services, to a physician who at the time of furnishing the services is a participating physician, and the term "nonparticipating physician" refers, with respect to the furnishing of services, a physician who at the time of furnishing the services is not a participating physician.*

* * * * * * *

(3) The Secretary shall promptly notify individuals enrolled under this part of the publication of [such] the directories and shall make [such] the appropriate area directory or directories available in each district and branch office of the Social Security Administration, in the offices of carriers, and to senior citizen organizations.

(4) The Secretary shall provide that the [the] directories shall be available for purchase by the public.

(j)(1) *(A) In the case of a physician who is not a participating physician for items and services furnished during a portion of the 30-month period beginning July 1, 1984, the Secretary shall monitor the physician's actual charges to individuals enrolled under this part for physicians' services during that portion of that period. If such physician knowingly and willfully bills individuals enrolled under this part for actual charges in excess of such physician's actual charges for the calendar quarter beginning on April 1, 1984, the Secretary may apply sanctions against such physician in accordance with paragraph (2).*

(B) In the case of a nonparticipating physician for services furnished on or after January 1, 1987, the Secretary shall monitor the physician's actual charges for such services. If such physician knowingly and willfully bills for actual charges in excess of the charges permitted under subparagraph (C), the Secretary may apply sanctions against such physician in accordance with paragraph (2).

(C) With respect to services furnished during 1987 for which payment is—

(i) made on an assignment-related basis, the charges may not exceed the physician's actual charges for the calendar quarter beginning on April 1, 1984, increased by the percentage increase in the medical economic index (under the fourth sentence of paragraph (3)) applicable to physicians' services furnished as of January 1, 1987, or

(ii) not made on an assignment-related basis, the charges may not exceed the physician's actual charges for the calendar quarter beginning on April 1, 1984, increased by 1 percent.

(2) Subject to paragraph (3), the sanctions which the Secretary may apply under paragraph (1) or subsection *(b)(8)(F),*(k)*,(1), or (1)(m), or (n) or section 1833(l)(4)* are—

(A) barring a physician from participation under the program under this title for a period not to exceed 5 years, in accordance with the procedures of paragraphs (2) and (3) of section 1862(d), or

(B) the imposition of civil monetary penalties and assessments, in the same manner as such penalties are authorized under section 1128A(a),

or both. No payment may be made under this title with respect to any item or service furnished by a physician during the period when he is barred from participation in the program under this title pursuant to this subsection.

* * * * * * *

(k)(1) If a physician knowingly and willfully *presents or causes to be presented a claim or* bills an individual enrolled under this part for charges for services as an assistant at surgery for which payment may not be made by reason of section 1862(a)(15), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).

(2) If a physician knowingly and willfully *presents or causes to be presented a claim or* bills an individual enrolled under this part for charges that includes a charge for an assistant at surgery for which payment may not be made by reason of section 1862(a)(15), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).

(l)(1) With respect to the provision of cataract surgery with intraoccular lens implantation and cataract surgery anesthesia furnished by a nonparticipating physician to an individual entitled to benefits under this part—

(A) the physician may not charge the individual more than 125 percent of the prevailing charge recognized under this part for the services (which, in th case of cataract surgery anesthesia, is based on conversion factors taking into account the base and time units allowed), and

(B) if the physician charges more than such amount, the physician shall refund to the individual (and shall be liable to the individual for) any amounts received in excess of such amount.

(2) If a physician knowingly and willfully imposes charges or fails to make refunds in violation of paragraph (1), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).

* * * * * * *

PHYSICIAN PAYMENT REVIEW COMMISSION

SEC. 1845. (a)(1) The Director of the Congressional Office of Technology Assessment (hereinafter in this section referred to as the "Director" and the "Office", respectively) shall provide for the appointment of a Physician Payment Review Commission (hereinafter in this section referred to as the "Commission"), to be composed of individuals with expertise in the provision and financing of physicians' services appointed by the Director (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service).

(2) The Commission shall consist of [11] *13* individuals. Members of the Commission shall first be appointed no later than May 1, 1986, for a term of three years, except that the Director may provide initially for such shorter terms as will insure that (on a continuing basis) the terms of no more than four members expire in any one year.

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PART C—MISCELLANEOUS PROVISIONS

DEFINITIONS OF SERVICES, INSTITUTIONS, ETC.

SEC. 1861. For purposes of this title—

Spell of Illness

(a) * * *

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Inpatient Hospital Services

(b) The term "inpatient hospital services" means the following items and services furnished to an inpatient of a hospital and (except as provided in paragraph (3)) by the hospital—

(1) * * *

* * * * * * *

(4) medical or surgical services provided by a physician, resident, or intern, *costs of anesthesia services provided by a certified registered nurse anesthetist*; and

* * * * * * *

Outpatient Occupational Therapy Services

(g) The term "outpatient occupational therapy services" has the meaning given the term "outpatient physical therapy services" in subsection (p), except that "occupational" shall be substituted for "physical" each place it appears therein.

* * * * * * *

Physician

(r) The term "physician", when used in connection with the performance of any function or action, means (1) a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he performs such function or action (including a physician within the meaning of section 1101(a)(7)), (2) a doctor of dental surgery or of dental medicine who is legally authorized to practice dentistry by the State in which he performs such function and who is acting within the scope of his license when he performs such functions, (3) a doctor of podiatric medicine for the purposes of subsection (s) of this section but only with respect to functions which he is legally authorized to perform as such by the State in which he performs them; and for the purposes of subsections (k), (m), and (p)(1) of this section and sections 1814(a), 1832(a)(2)(F)(ii), and 1835 but only if his performance of functions under subsections (k), (m), and (p)(1) of this section and sections 1814(a), 1832(a)(2)(F)(ii), and 1835 is consistent with the policy of the institution or agency with respect to which he performs them and with the functions which he is legally authorized to perform, **[**(4) a doctor of optometry who is legally authorized to practice optometry by the State in which he performs such action, but only with respect to services related to the condition of aphakia, or**]** *(4) a doctor of optometry, but only with respect to the provision of items or services described in subsection (s) which he is legally authorized to perform as a doctor of optometry by the State in which he performs them, or* (5) a chiropractor who is licensed as such by the State (or in a State which does not license chiropractors as such, is legally authorized to perform the services of a chiropractor in the jurisdiction in which he performs such services), and who meets uniform minimum standards promulgated by the Secretary but only for the purpose of sections 1861(s)(1) and 1861(s)(2)(A) and only with respect to treatment by means of manual manipulation of the spine (to correct a subluxation demonstrated by X-ray to exist) which he is legally authorized to perform by the State or jurisdiction in which such treatment is provided. For the purposes of section 1862(a)(4) and subject to the limitations and conditions provided in the previous sentence, such term includes a doctor of one of the arts, specified in such previous sentence, legally authorized to practice such art in the country in which the inpatient hospital services (referred to in such section 1862(a)(4)) are furnished.

Medical and Other Health Services

(s) The term "medical and other health services" means any of the following items or services:

(1) physicians' services;

(2)(A) * * *

* * * * * * *

(D) outpatient physical therapy services *and outpatient occupational therapy services;*

* * * * * * *

(H)(i) services furnished pursuant to a contract under section 1876 to a member of an eligible organization by a physician assistant or by a nurse practitioner (as defined in subsection (aa)(3)) and such services and supplies furnished as an incident to his service to such a member as would otherwise be covered under this part if furnished by a physician or as an incident to a physician's service; and

(ii) services furnished pursuant to a risk-sharing contract under section 1876(g) to a member of an eligible organization by a clinical psychologist (as defined by the Secretary), and such services and supplies furnished as an incident to his services to such a member as would otherwise be covered under this part if furnished by a physician or as an incident to a physician's service; **[and]**

(I) blood clotting factors, for hemophilia patients competent to use such factors to control bleeding without medical or other supervision, and items related to the administration of such factors, subject ot utilization controls deemed necessary by the Secretary for the efficient use of such factors;

(J) immunosuppressive drugs furnished to an individual who receives an organ transplant within 1 year after the date of the trnasplant procedure; and

(K)(i) services which are performed by a physician assistant (as defined in subsection (aa)(3)) under the supervision of a physician as defined in subsection (r)(1) in a hospital, skilled nursing facility, or as an assistant at surgery and which the physician assistant is legally authorized to perform by the State in which the services are performed, and

(ii) such services and supplies furnished as an incident to such services as would be covered under subparagraph (A) if furnished as an incident to a physician's professional service;

* * * * * * *

(9) leg, arm, back, and neck braces, and artificial legs, arms, and eyes, including replacements if required because of a change in the patient's physical condition; **[**and**]**

(10)(A) pneumococcal vaccine and its administration; and

(B) hepatitis B vaccine and its administration, furnished to an individual who is at high or intermediate risk of contracting hepatitis B (as determined by the Secretary under regulation**[**.**]***; and*

No diagnostic tests performed in any laboratory which is independent of a physician's office, a rural health clinic, or a hospital (which, for purposes of this sentence, means an institution considered a hospital for purposes of section 1814(d)) shall be included within paragraph (3) unlss such laboratory—

(11) services of a registered nurse anesthetist (as defined in subsection (bb)).

[(11)**]***(12)* if situated in any State in which State or applicable local law provides for licensing of establishments of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing establishments of this nature, as meeting the standards established for such licensing; and

[(12)**]***(13)* meets such other conditions relating to the health and safety of individuals with respect to whom such tests are performed as the Secretary may find necessary.

There shall be excluded from the diagnostic services specified in paragraph (2)(C) any item or service (except services referred to in paragraph (1)) which—

[(13)**]***(14)* would not be included under subsection (b) if it were furnished to an inpatient of a hospital; or

[(14)**]***(15)* is furnished under arrangements referred to in such paragraph (2)(C) unless furnished in the hospital or in other facilities operated by or under the supervision of the hospital or its organized medical staff.

* * * * * * *

Reasonable Cost

(v)(1)(A) * * *

* * * * * * *

(L) The Secretary, in determining the amount of the payments that may be made under this title with respect to services furnished by home health agencies, may not recognize as reasonable (in the efficient delivery of such services) costs for the provision of such services by an agency to the extent these costs exceed (on the aggregate for the agency) the 75th percentile of such costs per visit for free standing home health agencies, or, in the judgment of the Secretary, such lower percentile or such comparable or lower limit (based on or related to the mean of the costs of such agencies or otherwise) as the Secretary may determine. *Such limitations shall be applied on an aggregate basis for all home health services furnished by an agency, rather than on a discipline-specific basis, with appropriate adjustment for administrative and general costs of hospital-based agencies.* The Secretary may provide for such exemptions and exceptions to such limitation as he deems appropriate.

(5)(A) Where physical therapy services, occupational therapy services, speech therapy services, or other therapy services or services of other health-related personnel (other than physicians) are furnished under an arrangement with a provider of services or other organization, specified in the first sentence of section 1861(p) *(including through the operation of section 1861(g))* the amount included in any patient to such provider or other organization under this title as the reasonable cost of such services (as furnished under such arrangements) shall not exceed an amount equal to the salary which would reasonably have been paid for such services (together with any additional costs that would have been incurred by the provider or other organization) to the person performing them if they had been performed in an employment relationship with such provider or other organization (rather than under such arrangement) plus the cost of such other expenses (including a reasonable allowance for traveltime and other reasonable types of expense related to any differences in acceptable methods of organization for the provision of such therapy) incurred by such person, as the Secretary may in regulations determine to be appropriate.

* * * * * * *

Services of a Registered Nurse Anesthetist

(bb)(1) The term "services of a registered nurse anesthetist" means anethesia services and related care furnished by a registered nurse anesthetist (as defined in paragraph (2)) which the nurse anethetist is legally authorized to perform as such by the State in which the services are furnished.

(2) The term "registered nurse anethetist" means a registered nurse licensed by the State who meets such education, training, and other requirements relating to anesthesia services and related care as the Secretary may prescribe. In prescribing such requirements the Secretary may use the same requirements as those established by a national organization for the certification of nurse anesthetists.

* * * * * * *

EXCLUSIONS FROM COVERAGE

SEC. 1862. (a) Notwithstanding any other provision of this title, no payment may be made under part A or part B for any expenses incurred for items or services—

(1)(A) which, except for items and services described in subparagraph (B), (C), or (D), are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member,

(B) in the case of items and services described in section 1861(s)(10), which are not reasonable and necessary for the prevention of illness,

(C) in the case of hospice care, which are not reasonable and necessary for the palliation or management of terminal illness, [and]

(D) in the case of clinical care items and services provided with the concurrence of the Secretary and with respect to research and experimentation conducted by, or under contract with, the Prospective Payment Assessment Commission or the Secretary, which are not reasonable and necessary to carry out the purposes of section 1886(e)(6)[;], *and*

(E) in the case of research conducted pursuant to section 1875(c), which is not reasonable and necessary to carry out the purposes of that section;

* * * * * * *

(14) which are other than physicians' services (as defined in regulations promulgated specifically for purposes of this paragraph) and which are furnished to an individual who is an inpatient of a hospital by an entity other than the hospital, unless the services are furnished under arrangements (as defined in section 1861(w)(1)) with the entity made by the hospital *or are services of a registered nurse anesthetist.*

* * * * * * *

USE OF STATE AGENCIES TO DETERMINE COMPLIANCE BY PROVIDERS OF SERVICES WITH CONDITIONS OF PARTICIPATION

SEC. 1864. (a) The Secretary shall make an agreement with any State which is able and willing to do so under which the services of the State health agency or other appropriate State agency (or the appropriate local agencies) will be utilized by him for the purpose of determining whether an institution therein is a hospital or skilled nursing facility, or whether an agency therein is a home health agency, or whehter an agency is a hospice program[295] or whether a facility therein is a rural health clinic as defined in section 1861(aa)(2) or a comprehensive outpatient rehabiliation facility as defined in section 1861(cc)(2), or whether a laboratory meets the requirements of paragraphs [11] and [12] *(12) and (13)* of section 1861(s), or whether a clinic, rehabilitation agency or public health agency meets the requirements of subparagraph (A) or (B), as the case may be, of section 1861(p)(4), or whether an ambulatory surgical center meets the standards specified under section 1832(a)(2)(F)(i). To the extent that the Secretary finds it appropriate, an institution or agency which such a State (or local) agency certifies is a hospital, skilled nursing facility, rural health clinic, comprehensive outpatient rehabilitation facility, home health agency, or hospice program (as those terms are defined in section 1861) may be treated as such by the Secretary. Any State agency which has such an agreement may (subject to approval of the Secretary) furnish to a skilled nursing facility, after proper request by such facility, such specialized consultative services (which such agency is able and willing to furnish in a manner satisfactory to the Secretary) as such facility may need to meet one or more of the conditions specified in section 1861(j). Any such services furnished by a State agency shall be deemed to have been furnished pursuant to such agreement. Within 90 days following the completion of each survey of any health care facility, ambulatory surgical center, rural health clinic, comprehensive outpatient rehabilitation facility, laboratory, clinic, agency, or organization by the appropriate State or local agency described in the first sentence of this subsection, the Secretary shall make public in readily available form and place the pertinent findings of each such survey relating to the compliance of each health care facility, ambulatory surgical center, rural health clinic, comprehensive outpatient rehabilitation facility, laboratory, clinic, agency, or organization with (1) the statutory conditions of participation imposed under this title and (2) the major additional conditions which the Secretary finds necessary in the interest of health and safety of individuals who are furnished care or services by any such health care facility, ambulatory surgical center, rural health clinic, comprehensive outpatient rehabilitation facility, laboratory, clinic, agency, or organization.

* * * * * * *

EFFECT OF ACCREDITATION

SEC. 1865. (a) Except as provided in subsection (b) and the second sentence of section 1863, if—

(1) an institution is accredited as a hospital by the Joint Commission on Accreditation of Hospitals, and

(2) such institution (if it is included within a survey described in section 1864(c)) authorizes the Commission to release to the Secretary upon his request (or such State agency as the Secretary may designate) a copy of the most current accreditation survey of such institution made by such Commission.

then, such institution shall be deemed to meet the requirements of the numbered paragraphs of section 1861(e); except—

(3) paragraph (6) thereof, and

(4) any standard, promulgated by the Secretary pursuant to paragraph (9) thereof, which is higher than the requirements prescribed for accreditation by such Commission.

If such Commission, as a condition for accreditation of a hospital, requires a utilization review plan (or imposes another requirement which serves substantially the same purpose) or imposes a standard which the Secretary determines is at least equivalent to the standard promulgated by the Secretary as described in paragraph (4) of this subsection, the Secretary is authorized to find that all institutions so accredited by such Commission comply also with section 1861(e)(6) or the standard described in such paragraph (4), as the case may be. In addition, if the Secretary finds that accreditation of an entity by the American Osteopathic Association or any other national accreditation body provides reasonable assurance that any or all of the conditions of section 1832(a)(2)(F)(i), 1861(e), 1861(f), 1861(j), 1861(o), 1861(p)(4)(A) or (B), paragraphs **[**(11) and (12)**]** *(12) and (13)* of section 1861(s), section 1861(aa)(2), 1861(cc)(2), or 1861(dd)(2), as the case may be, are met, he may, to the extent he deems it appropriate, treat such entity as meeting the condition or conditions with respect to which he made such finding. The Secretary may not disclose any accreditation survey made and released to him by the Joint Commission on Accreditation of Hospitals, the American Osteopathic Association, or any other national accreditation body, of an entity accredited by such body.

* * * * * * *

AGREEMENTS WITH PROVIDERS OF SERVICES

SEC. 1866. (a)(1) Any provider of services (except a fund designated for purposes of section 1814(g) and section 1835(e)) shall be qualified to participate under this title and shall be eligible for payments under this title if it files with the Secretary an agreement—

(A) * * *

* * * * * * *

(H) in the case of hospitals which provide inpatient hospital services for which payment may be made under this title, to have all items and services (other than physicians' services as defined in regulations for purposes of section 1862(a)(14) *and other than services of a registered nurse anesthetist* (i) that are furnished to an individual who is an inpatient of the hospital, and (ii) for which the individual is entitled to have payment made under this title, furnished by the hospital or otherwise under arrangements (as defined in section 1861(w)(1)) made by the hospital.

"(I) in the case of a hospital, to comply with the requirements of section 1867 to the extent applicable, **[**and**]**

"(J) in the case of hospitals which provide inpatient hospital services for which payment may be made under this title, to be a participating provider of medical care under any health plan contracted for under section 1079 or 1086 of title 10, or under section 613 of title 38, United States Code, in accordance with admission practices, payment methodology, and amounts as prescribed under joint regulations issued by the Secretary and by the Secretaries of Defense and Transportation, in implementation of sections 1079 and 1086 of title 10, United States Code**[**.**]**,

["(I)**]** (*K*) not to charge any individual or any other person for items or services for which payment under this title is denied under section 1154(a)(2) by reason of a determination under section 1154(a)(1)(B)**[**.**]**, and

(L) in the case of hospitals—

(i) to make available to its patients the directory or directories of participating physicians (published under section 1842(h)(4)) for the area served by the hospital, and

(ii) if hospital personnel (including personnel of any emergency or outpatient department) refer a patient to a nonparticipating physician for further medical care on an outpatient basis, the personnel must inform the patient that the physician is a nonparticipating physician and, whenever practicable, must identify at least one participat-

ing physician who is listed in such a directory and from whom the patient may receive the necessary services.

* * * * * * *

(e) For purposes of this section, the term "provider of services" shall include a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1861(p)(4)(A) *(or meets the requirements of such section through the operation of section 1861(g)),* or if, in the case of a public health agency, such agency meets the requirements of section 1861(p)(4)(B) *(or meets the requirements of such section through the operation of section 1861(g)),* but only with respect to the furnishing of outpatient physical therapy services (as therein defined) *or (through the operation of section 1861(g)) with respect to the furnishing of outpatient occupational therapy services.*

* * * * * * *

DETERMINATIONS; APPEALS

SEC. 1869. (a) The determination of whether an individual is entitled to benefits under part A or part B, and the determination of the amount of benefits under part A *or part B,* shall be made by the Secretary in accordance with regulations prescribed by him.

(b)(1) Any individual dissatisfied with any determination under subsection (a) as to—

(A) whether he meets the conditions of section 226 of this Act or section 103 of the Social Security Amendments of 1965, or

(B) whether he is eligible to enroll and has enrolled pursuant to the provisions of part B of this title or section 1818, or

(C) the amount of benefits under part A *or part B* (including a determination where such amount is determined to be zero) shall be entitled to a hearing thereon by the Secretary to the same extent as is provided in section 205(b) and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).

[(2) Notwithstanding the provisions of subparagraph (C) of paragraph (1) of this subsection, a hearing shall not be available to an individual by reason of such subparagraph (C) if the amount in controversy is less than $100; nor shall judicial review be available to an individual by reason of such subparagraph (C) if the amount in controversy is less than $1,000.]

(2) Notwithstanding paragraph (1)(C), in the case of a claim arising—

(A) under part A, a hearing shall not be available to an individual under paragraph (1)(C) if the amount in controversy is less than $100 and judicial review shall not be available to the individual under that paragraph if the amount in controversy is less than $1,000; or

(B) under part B, a hearing shall not be available to an individual under paragraph (1)(C) if the amount in controversy is less than $500 and judicial review shall not be available to the

individual under that paragraph if the aggregate amount in controversy is less than $1,000.

In determining the amount in controversy, the Secretary, under regulations, shall allow two or more claims to be aggregated if the claims involve the delivery of similar or related services to the same individual or involve common issues of law and fact arising from services furnished to two or more individuals.

(3) Paragraph (1) shall not be construed as authorizing any administrative law judge to review any national coverage determination under section 1862(a)(1) respecting whether or not a particular type or class of items or services is covered under this title.

* * * * * * *

STUDIES AND RECOMMENDATIONS

SEC. 1875. (a) The Secretary shall carry on studies and develop recommendations to be submitted from time to time to the Congress relating to health care of the aged and the disabled, including studies and recommendations concerning (1) the adequacy of existing personnel and facilities for health care for purposes of the programs under parts A and B; (2) methods for encouraging the further development of efficient and economical forms of health care which are a constructive alternative to inpatient hospital care; and (3) the effects of the deductibles and coinsurance provisions upon beneficiaries, persons who provide health services, and the financing of the program.

(b) The Secretary shall make a continuing study of the operation and administration of the insurance programs under parts A and B (including a validation of the accreditation process of the Joint Commission on Accreditation of Hospitals, the operation and administration of health maintenance organizations authorized by section 226 of the Social Security Amendments of 1972 the experiments and demonstration projects authorized by section 402 of the Social Security Amendments of 1967 and the experiments and demonstration projects authorized by section 222(a) of the Social Security Amendments of 1972), and shall transmit to the Congress annually a report concerning the operation of such programs.

(c)(1) The Secretary shall establish a program (hereinafter in this subsection referred to as the 'research program') to provide for research with respect to patient outcomes of selected medical treatments and surgical procedures for the purpose of assessing their appropriateness, necessity, and effectiveness. The research program shall include—

(A) assessments of the extent of uncertainty regarding appropriateness;

(B) assessments of the appropriateness of admissions or selection criteria;

(C) development of improved measures of patient outcome,

(D) evaluation of patient outcomes, and

(E) efforts to reduce existing levels of uncertainty or disagreement regarding appropriateness.

(2) In selecting treatments and procedures to be studied, the Secretary shall give priority to those medical and surgical treatments and procedures—

(A) for which data indicate a highly (or potentially highly) variable pattern of utilization among beneficiaries under this title in different geographic areas, and

(B) which are significant (or potentially significant) for purposes of this title in terms of utilization by beneficiaries, length of hospitalization associated with the treatment or procedure, costs to the program, and risk involved to the beneficiary.

(3) For purposes of carrying out the research program, there shall be available—

(A) from the Federal Hospital Insurance Trust Fund $4,000,000 for fiscal year 1987 and $5,000,000 for each of fiscal years 1988 and 1989, and

(B) from the Federal Supplementary Medical Insurance Trust Fund $2,000,000 for fiscal years 1987 and $2,500,000 for each of fiscal years 1988 and 1989.

(4) Not less than 90 percent of the amount appropriated for any fiscal year to carry out the research program shall be used to fund grants to, and cooperative agreements with, non-Federal entities to conduct research described in paragraph (1). The remainder may be used by the Secretary to provide such research by Federal entities and for administrative costs.

(5) The research program shall be administered by the National Center for Health Services Research and Health Care Technology established under section 305 of the Public Health Service Act (hereinafter in this subsection referred to as the "Center"). The Center shall establish application procedures for grants and cooperative agreements, and shall establish peer review panels to review all such applications and all research findings. The Center shall consult with the council on health care technology (established under a grant under section 309 of the Public Health Service Act) in establishing the scope and priorities for the research program and shall report periodically to any such council on the status of the program.

(6) The Secretary shall make available data derived from the programs under this title and other programs administered by the Secretary for use in the research program.

(7) The Center shall report to the Committees on Finance and Appropriations of the Senate and the Committees on Ways and Means, Energy and Commerce, and Appropriations of the House of Representatives not later than 18 months after the date of enactment of this Act, and annually thereafter, with respect to the findings under the research program. In cooperation with appropriate medical specialty groups, the Center shall disseminate such findings as widely as possible, including disseminating such findings to each peer review organization which has a contract under part B of title XI.

PAYMENTS TO HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS

SEC. 1876. (a)(1)(A) The Secretary shall annually determine, and shall [publish] *announce (in a manner intended to provide notice to interested parties)* not later than September 7 before the calendar year concerned—

(i) a per capita rate of payment for each class of individuals who are enrolled under this section with an eligible organization which has entered into a risk-sharing contract and who are entitled to benefits under part A and enrolled under part B, and

(ii) a per capita rate of payment for each class of individuals who are so enrolled with such an organization and who are enrolled under part B only.

For purposes of this section, the term "risk-sharing contract" means a contract entered into under subsection (g) and the term "reasonable cost reimbursement contract" means a contract entered into under subsection (h).

* * * * * * *

(f)(1) Each eligible organization with which the Secretary enters into a contract under this section shall have, for the duration of such contract, an enrolled membership at least one-half of which consists of individuals who are not entitled to benefits under this title or under a State plan approved under title XIX.

(2) The Secretary may modify or waive the requirement imposed by paragraph (1) only [if the Secretary determines that—

(A) special circumstances warrant such modification or waiver, and

(B) the eligible organization has taken and is making reasonable efforts to enroll individuals who are not entitled to benefits under this title or under a State plan approved under title XIX.] *to the extent that more than 50 percent of the population of the area served by the organization consists of individuals who are entitled to benefits under this title or under a State plan approved under title XIX.*

(3) If the Secretary determines that an eligible organization has failed to comply with the requirements of this subsection, the Secretary may provide for the suspension of payments to the organization under this section for individuals enrolled with the organization after the date the Secretary notifies the organization of such noncompliance.

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PENALTIES

SEC. 1877. (a) Whoever—

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(b) * * *

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(3) Paragraphs (1) and (2) shall not apply to—

(A) a discount or other reduction in price obtained by a provider of services or other entity under this title if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under this title; [and]

(B) any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services[.]*; and*

(C) any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of individuals or entities who are reimbursed under this title if—

(i) the person has a written contract with each such vendor and each such individual or entity which specifies the amount to be paid the person, which amount may be fixed amount or a fixed percentage (not to exceed 3 percent) of the value of the purchases made by each such individual or entity under the contract, and

(ii) the person discloses to each such individual or entity the amount received from each such vendor with respect to purchases made by or on behalf of the individual or entity.

* * * * * * *

LIMITATION ON LIABILITY OF BENEFICIARY WHERE MEDICARE CLAIMS ARE DISALLOWED

SEC. 1879. (a) Where—

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(d) In any case arising under subsection (b) (but without regard to whether payments have been made by the individual to the provider or other person) or subsection (c), the provider or other person shall have the same right that an individual has under [section 1869(b) (when the determination is under part A) or section 1842(b)(3)(C) (when the determination is under part B)] *section 1869(b) and 1842(b)(3)(C) (as may be applicable)* when the amount of benefit or payments is in controversy, except that such rights may, under prescribed regulations, be exercised by such provider or other person only after the Secretary determines that the individual will not exercise such rights under such sections.

* * * * * * *

MEDICARE COVERAGE FOR END STAGE RENAL DISEASE PATIENTS

SEC. 1881. (a) The benefit provided by parts A and B of this title shall include benefits for individuals who have been determined to have end stage renal disease as provided in section 226A, and benefits for kidney donors as provided in subsection (d) of this section. Notwithstanding any other provision of this title, the type, duration, and scope of the benefit provided by parts A and B with respect to individuals who have been determined to have end stage renal disease and who are entitled to such benefits without regard to section 226A shall in no case be less than the type, duration, and scope of the benefits so provided for individuals entitled to such benefits solely by reason of that section.

(b)(1) * * *

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(7) The Secretary shall provide by regulation for a method (or methods) for determining prospectively the amounts of payments to be made for dialysis services furnished by providers of service and renal dialysis facilities to individuals in a facility and to such individuals at home. Such method (or methods) shall provide for the

prospective determination of a rate (or rates) for each mode of care based on a single composite weighted formula (which takes into account the mix of patients who receive dialysis services at a facility or at home and the relative costs of providing such services in such settings) for hospital-based facilities and such a single composite weighted formula for other renal dialysis facilities, or based on such other method or combination of methods which differentiate between hospital-based facilities and other renal dialysis facilities and which the Secretary determines, after detailed analysis, will more effectively encourage the more efficient delivery of dialysis services and will provide greater incentives for increased use of home dialysis then through the single composite weighted formulas. *Each application for such an exception shall be deemed to be approved unless the Secretary disapproves it by not later than 45 working days after the date the application is filed.* The Secretary shall provide for such exceptions to such methods as may be warranted by unusual circumstances (including the special circumstances of sole facilities located in isolated, rural area and of pediatric facilities). The Secretary may provide that such method will serve in lieu of any target reimbursement rate that would otherwise be established under paragraph (6). *The Secretary shall reduce the amount of each composite rate payment under this paragraph for each treatment by 50 cents and provide for payment of such amount to the network administrative organization (designated under subsection (c)(1)(A) for the network area in which the treatment is provided) for the network area in which the treatment is provided) for its necessary and proper administrative costs incurred in carry out its responsibilities under subsection (c)(2).*

* * * * * * *

[(c)(1)(A) For the purpose of assuring effective and efficient administration of the benefits provided under this section, the Secretary shall establish, in accordance with such criteria as he finds appropriate, renal disease network areas, such network organization (including a coordinating council, and executive committee of such council, and a medical review board, for each network area) as he finds necessary to accomplish such purpose, and a national end stage renal disease medical information system. The Secretary may by regulations provide for such coordination of network planning and quality assurance activities and such exchange of data and information among agencies with responsibilities for health planning and quality assurance activities under Federal law as is consistent with the economical and efficient administration of this section and with the responsibilities established for network organizations under this section.**]**

(c)(1)(A)(i) For the purpose of assuring effective and efficient administration of the benefits provided under this section, the Secretary shall, in accordance with such criteria as he finds necessary to assure the performance of the responsibilities and functions specified in paragraph (2)—

(I) establish at least 17 end stage renal disease network areas, and

(II) for each such area, designate a network administrative organization which, in accordance with regulations of the Sec-

retary, shall establish a network council of renal dialysis and transplant facilities located in the area, and a medical review board, which has a membership including physicians, nurses, and social workers engaged in treatment relating to end stage renal disease.

The Secretary shall publish in the Federal Register a description of the geographic area that he determines, after consultation with appropriate professional and patient organizations, constitutes each network area and the criteria on the basis of which such determination is made.

(ii)(I) In order to determine whether the Secretary should enter into, continue, or terminate an agreement with a network administrative organization designated for an area established under clause (i), the Secretary shall develop and publish in the Federal Register standards, criteria, and procedures to evaluate an applicant organization's capabilities to perform (and, in the case of an organization with which such an agreement is in effect, actual performance of) the responsibilities described in paragraph (2).

(II) An agreement with a network administrative organization may be terminated by the Secretary only if he finds, after applying such standards and criteria, that the organization has failed to perform its prescribed responsibilities effectively and efficiently. If such an agreement is to be terminated, the Secretary shall solicit applicants for such an agreement in accordance with provisions of law relating to competitive bidding so as to provide an orderly transition.

[(B) At least one patient representative shall serve as a member of each coordinating council and executive committee.]

(B) At least one patient representative shall serve as a member of each network council and each medical review board.

* * * * * * *

(2) the network organizations of each network shall be responsible, in addition to such other duties and functions as may be prescribed by the Secretary, for—

(A) encouraging, consistent with sound medical practice, the use of those treatment settings most compatible with the successful rehabilitation of the patient *and the participation of patients, providers of services, and renal disease facilities in vocational rehabilitation programs*;

(B) developing criteria and standards relating to the quality and appropriateness of patient care; and network goals with respect to the placement of patients in self-care settings and undergoing or preparing for transplantation *and with respect to working with patients, facilities, and providers in encouraging participation in vocational rehabilitation programs*;

(C) evaluating the procedure by which facilities and providers in the network assess the appropriateness of patients for proposed treatment modalities;

(D) implementing a procedure for evaluating and resolving patient grievances;

(E) conducting on-site reviews of facilities and providers as necessary (as determined by a medical review board), utilizing

standards of care established by the network organization to assure proper medical care;

(F) collecting, validating, and analyzing such data as are necessary to prepare the reports required by subparagraph (H) and subsection (g) and to assure the maintenance of the registry established under paragraph (7);

[(D)]*(G)* identifying facilities and providers that are not cooperating toward meeting network goals and assisting such facilities and providers in developing appropriate plans for correction *and reporting to the Secretary on facilities and providers that are not providing appropriate medical care; and*

[(E)] *(H)* submitting an annual report to the Secretary on July 1 of each year which shall include a full statement of the network's goals, data on the network's performance in meeting its goals (including data on the comparative performance of facilities and providers with respect to the identification and placement of suitable candidates in self-care settings and transplantation *and encouraging participation in vocational rehabilitation programs*), identification of those facilities that have consistently failed to cooperate with network goals, and recommendations with respect to the need for additional or alternative services or facilities in the network in order to meet the network goals, including self dialysis training, transplantation, and organ procurement facilities.

(3) Where the Secretary determines, on the basis of the data contained in the network's annual report and such other relevant data as may be available to him, that a facility or provider has consistently failed to cooperate with network plans and goals *or to follow the recommendations of the medical review board* he may terminate or withhold certification of such facility or provider (for purposes of payment for services furnished to individuals with end stage renal disease) until he determines that such provider or facility is making reasonable and appropriate efforts to cooperate with network's plans and goals. If the Secretary determines that the facility's or provider's failure to cooperate with network plans and goals does not jeopardize patient health or safety or justify termination of certification, he may instead, after reasonable notice to the provider or facility and to the public, impose such other sanctions as he determines to be appropriate, which sanctions may include denial of reimbursement with respect to some or all patients admitted to the facility after the date of notice to the facility or provider, and graduated reduction in reimbursement for all patients.

* * * * * * *

(6) It is the intent of the Congress that the maximum practical number of patients who are medically, socially, and psychologically suitable candidates for home dialysis or transplantation should be so treated *and that the maximum practical number of patients who are suitable candidates for vocational rehabilitation services be given access to such services and encouraged to return to gainful employment*. The Secretary shall consult with appropriate professional and network organizations and consider available evidence relating to developments in research, treatment methods, and technology for home dialysis and transplantation. The Secretary shall

periodically submit to the Congress such legislative recommendations as the Secretary finds warranted on the basis of such consultation and evidence to further the national objective of maximizing the use of home dialysis and transplantation consistent with good medical practice.

(7) The Secretary shall establish a national end stage renal disease registry the purpose of which shall be to assemble and analyze the data reported by network organizations, transplant centers, and other sources on all end stage renal disease patients in a manner that will permit—

(A) the preparation of the annual report to the Congress required under subsection (g);

(B) an identification of the economic impact, cost-effectiveness, and medical efficacy of alternative modalities of treatment;

(C) an evaluation with respect to the most appropriate allocation of resources for the treatment and research into the cause of end stage renal disease;

(D) the determination of patient mortality and morbidity rates, and trends in such rates, and other indices of quality of care; and

(E) such other analyses relating to the treatment and management of end stage renal disease as will assist the Congress in evaluating the end stage renal disease program under this section.

The Secretary shall provide for such coordination of data collection activities, and such consolidation of existing end stage renal disease data systems, as is necessary to achieve the purpose of such registry, shall determine the appropriate location of the registry, and shall provide for the appointment of a professional advisory group to assist the Secretary in the formulation of policies and procedures relevant to the management of such registry.

* * * * * * *

(f)(1) * * *

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[(7) The Secretary shall conduct a study of the medical appropriateness and safety of cleaning and reusing dialysis filters by home dialysis patients. In such cases in which the Secretary determines that such home cleaning and reuse of filters is a medically sound procedure, the Secretary shall conduct experiments to evaluate such home cleaning and reuse as a method of reducing the costs of the end stage renal disease program.]

(7)(A) The Secretary shall establish protocols on standards and conditions for the reuse of dialyzer filters for those facilities and providers which voluntarily elect to reuse such filters.

(B) The Secretary shall study and review the appropriateness of establishing protocols on standards and conditions for the reuse (where appropriate) of other dialysis supplies (such as blood lines, transducer filters, and dialyzer caps). If the Secretary determines that the establishment of such a protocol with respect to such a dialysis supply is appropriate, the Secretary may establish such a protocol.

(C) If a renal disease facility fails to follow a protocol established under this paragraph in the reuse of a dialyzer filter or other dialysis supply, the facility shall be subject to such a penalty as the Secretary may establish.

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PAYMENT TO HOSPITALS FOR INPATIENT HOSPITAL SERVICES

SEC. 1886. (a)(1)(A)(i) * * *

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(4) For purposes of this section, the term "operating costs of inpatient hospital services" includes all routine operating costs, ancillary service operating costs, and special care unit operating costs with respect to inpatient hospital services as such costs are determined on an average per admission or per discharge basis (as determined by the Secretary). Such term does not include costs of approved educational activities, **[**costs of anesthesia services provided by a certified registered nurse anesthetist,**]** *a return on equity capital;* or, with respect to costs incurred in cost reporting periods beginning prior to October 1, 1986, other capital-related costs, as defined by the Secretary.

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(d)(1)(A) * * *

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(5)(A)(i) * * *

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[(E) The Secretary shall provide for an additional payment amount for any subsection (d) hospital equal to the reasonable costs incurred by such hospital for anesthesia services provided by a certified registered nurse anesthetist. Payment under this subparagraph shall be the only payment made to such hospital with respect to such services.**]**

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(h) PAYMENTS FOR DIRECT GRADUATE MEDICAL EDUCATION COSTS.—

(1) * * *

* * * * * * *

(4) DETERMINATION OF FULL-TIME-EQUIVALENT RESIDENTS.—

(A) RULES.—The Secretary shall establish rules consistent with this paragraph for the computation of the number of full-time-equivalent residents in an approved medical residency training program.

(B) ADJUSTMENT FOR PART-YEAR OR PART-TIME RESIDENTS.—Such rules shall take into account individuals who serve as residents for only a portion of a period with a hospital or simultaneously with more than one hospital.

(C) WEIGHTING FACTORS FOR CERTAIN RESIDENTS.—Subject to subparagraph (E), such rules shall provide, in calculating the number of full-time-equivalent residents in an approved residency program—

(i) before July 1, 1986, for each resident the weighting factor is 1.00,

(ii) on or after July 1, 1986, for a resident who is in the resident's initial residency period (as defined in paragraph (5)(F)), the weighting factor is 1.00,

(iii) on or after July 1, 1986, and before July 1, 1987, for a resident who is not in the resident's initial residency period (as defined in paragraph (5)(F)), the weighting factor is .75, and

(iv) on or after July 1, 1987, for a resident who is not in the resident's initial residency period (as defined in paragraph (5)(F)), the weighting factor is .50.

(D) COUNTING TIME SPENT IN OUTPATIENT SETTINGS.—Such rules shall provide that only time spent in activities relating to patient care shall be counted and that all the time so spent by a resident under an approved medical residency training program shall be counted towards the determination of full-time equivalency, without regard to the setting in which the activities are performed, if the hospital incurs costs for the training program in that setting.

(E) FOREIGN MEDICAL GRADUATES REQUIRED TO PASS FMGEMS EXAMINATION.—

(i) * * *

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(ii) TRANSITION FOR CURRENT FMGS.—On or after July 1, 1986, *but before July 1, 1987,* in the case of a foreign medical graduate who—

(I) has served as a resident before July 1, 1986, and is serving as a resident after that date, but

(II) has not passed the FMGEMS examination or a previous examination of the Educational Commission for Foreign Medical Graduates before July 1, 1986,

the individual shall be counted as a resident at a rate equal to one-half of the rate at which the individual would otherwise be counted.

(5) DEFINITIONS AND SPECIAL RULES.—As used in this subsection:

(A) * * *

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(F) INITIAL RESIDENCY PERIOD.—The term "initial residency period" means the period of board eligibility plus one year, except that—

(i) except as provided in clause (ii), in no case shall the initial period of residency exceed an aggregate period of formal training of more than [five] *four* years for any individual, and

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TITLE XIX—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

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STATE PLANS FOR MEDICAL ASSISTANCE

SEC. 1902. (a) A State plan for medical assistance must—

(1) * * *

* * * * * * *

(9) provide—

(A) that the State health agency, or other appropriate State medical agency (whichever is utilized by the Secretary for the purpose specified in the first sentence of section 1864(a)), shall be responsible for establishing and maintaining health standards for private or public institutions in which recipients of medical assistance under the plan may receive care or services,

(B) for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards, other than those relating to health for such institutions, and

(C) that any laboratory services paid for under such plan must be provided by a laboratory which meets the applicable requirements of section 1861(e)(9) or paragraphs **[**(11) and (12)**]** *(12) and (13)* of section 1861(s), or, in the case of a laboratory which is in a rural health clinic, of section 1861(aa)(2)(G);

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PENALTIES

SEC. 1909. (a) Whoever—

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(b)(1) * * *

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(3) Paragraphs (1) and (2) shall not apply to—

(A) a discount or other reduction in price obtained by a provider of services or other entity under this title if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under this title; **[**and**]**

(B) any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or service**[**.**]** *; and*

(C) any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of individuals or entities who are reimbursed under this title if—

(i) the person has a written contract with each such vendor and each such individual or entity which specifies the amount to be paid the person, which amount may be a fixed amount or a fixed percentage (not to exceed 3 percent)

of the value of the purchases made by each such individual or entity under the contract, and

(ii) the person discloses to each such individual or entity the amount received from each such vendor with respect to purchases made by or on behalf of the individual or entity.

* * * * * * *

PROVISIONS RESPECTING INAPPLICABILITY AND WAIVER OF CERTAIN REQUIREMENTS OF THIS TITLE

SEC. 1915. (a) A State shall not be deemed to be out of compliance with the requirements of paragraphs (1), (10), or (23) of section 1902(a) solely by reason of the fact that the State (or any political subdivision thereof)—

(1) has entered into—

(A) a contract with an organization which has agreed to provide care and services in addition to those offered under the State plan to individuals eligible for medical assistance who reside in the geographic area served by such organization and who elect to obtain such care and services from such organization, or by reason of the fact that the plan provides for payment for rural health clinic services only if those services are provided by a rural health clinic; or

(B) arrangements through a competitive bidding process or otherwise for the purchase of laboratory services referred to in section 1905(a)(3) or medical devices if the Secretary has found that—

(i) adequate services or devices will be available under such arrangements, and

(ii) any such laboratory services will be provided only through laboratories—

(I) which meet the applicable requirements of section 1861(e)(9) or paragraphs **[**(11) and (12)**]** *(12) and (13)* of section 1861(s), and such additional requirements as the Secretary may require, and

(II) no more than 75 percent of whose charges for such services are for services provided to individuals who are entitled to benefits under this title or under part A or part B of title XVIII; or

* * * * * * *

CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

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TITLE IX—MEDICARE, MEDICAID, AND MATERNAL AND CHILD HEALTH PROGRAMS

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Subtitle A—Medicare

PART 1—PROVISIONS RELATING TO PART A OF MEDICARE

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Subpart B—Miscellaneous Provisions

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SEC. 9127. ADDITIONAL MEMBERS OF PROSPECTIVE PAYMENT ASSESSMENT COMMISSION.

(a) EXPANSION OF MEMBERSHIP.—Section 1886(e)(6)(A) of the Social Security Act (42 U.S.C. 1395ww(e)(6)(A)) is amended by striking out "15 individuals" and inserting in lieu thereof "17 individuals".

(b) APPOINTMENTS.—The Director of the Congressional Office of Technology Assessment shall appoint the two additional members of the Prospective Payment Assessment Commission, as required by the amendment made by subsection (a), no later than 60 days after the date of the enactment of this Act, for terms of three years, *except that the Director may provide initially for such terms as will insure that (on a continuing basis) the terms of no more than eight members will expire in any one year.*

* * * * * * *

PART 2—PROVISIONS RELATING TO PARTS A AND B OF MEDICARE

Subpart A—Payment-Related Provisions

* * * * * * *

SEC. 9202. PAYMENTS TO HOSPITALS FOR DIRECT COSTS OF MEDICAL EDUCATION.

(a) * * *

* * * * * * *

(j) SPECIAL TREATMENT OF STATES FORMERLY UNDER WAIVER.—In the case of a hospital in a State that has had a waiver approved under section 1886(c) of the Social Security Act *or section 402 of the Social Security Amendments of 1967* for cost reporting periods beginning on or after January 1, 1986, if the waiver is terminated—

(1) the Secretary of Health and Human Services shall permit the hospital to change the method by which it allocates administrative and general costs to the direct medical education cost centers to the method specified in the medicare cost report;

(2) the Secretary may make appropriate adjustments in the regional adjustment DRG prospective payment rate (for the region in which the State is located), based on the assumption that all teaching hospitals in the State use the medicare cost report; and

(3) the Secretary shall adjust the hospital-specific portion of payment under section 1886(d) of such Act for any such hospital that actually chooses to use the medicare cost report.

The Secretary shall implement this subsection based on the best available data.

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Subpart B—Other Provisions

* * * * * * *

SEC. 9221. CONTINUATION OF "ACCESS: MEDICARE" DEMONSTRATION PROJECT.

(a) APPROVAL OF APPLICATION.—The Secretary of Health and Human Services shall approve any application for a waiver of any requirement of titles XVIII and XIX of the Social Security Act necessary to provide for the continuation, through [September 30, 1986] *July 31, 1987,* of the "Access: Medicare" demonstration project carried out pursuant to section 222 of the Social Security Amendments of 1972 and section 402(a) of the Social Security Amendments of 1967 by Monroe County Long Term Care Program, Inc.

(b) TERMS AND CONDITIONS.—The Secretary's approval of an application (or renewal of an application) under subsection (a) shall be on the same terms and conditions as applied to the demonstration project as in effect on August 31, 1985.

PART 3— PROVISIONS RELATING TO PART B OF MEDICARE

Subpart A—Payment-Related Provisions

SEC. 9301. MEDICARE PHYSICIAN PAYMENT PROVISIONS.

(a) * * *

* * * * * * *

(c) INCENTIVES FOR PARTICIPATING PHYSICIAN PROGRAM—

(1) * * *

* * * * * * *

(5) EFFECTIVE DATE.—Section [1842(b)(7)] *1842(h)(7)* of the Social Security Act, as added by paragraph (4) of this subsection, shall apply to explanations of benefits provided on or after such date (not later than October 1, 1986) as the Secretary of Health and Human Services shall specify.

* * * * * * *

TITLE V—MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT

AUTHORIZATION OF APPROPRIATIONS

SEC. 501. (a) For the purpose of enabling each State—

(1) * * *

* * * * * * *

and for the purpose of enabling the Secretary to provide for special projects of regional and national significance, research, and training with respect to maternal and child health and children with special health care needs, for genetic disease testing, counseling, and information development and dissemination programs, and for grants relating to hemophilia (without regard to age), there are authorized to be appropriated [$478,000,000 for fiscal year 1984] *$553,000,000 for fiscal year 1987, $557,000,000 for fiscal year 1988, and $561,000,000 for fiscal year 1989* and each fiscal year thereafter.

* * * * * * *

ALLOTMENTS TO STATES AND FEDERAL SET-ASIDE

SEC. 502. (a)(1)*(A)* Of the amount appropriated under section 501(a), the Secretary shall retain an amount equal to 15 percent thereof in the case of fiscal year 1982, and an amount equal to not less than 10, nor more than 15, percent thereof in the case of each fiscal year thereafter, for the purpose of carrying out (through grants, contracts, or otherwise) special projects of regional and national significance, training, and research and for the funding of genetic disease testing, counseling, and information development and dissemination programs and of comprehensive hemophilia diagnostic and treatment centers. The authority of the Secretary to enter into any contracts under this title is effective for any fiscal year only to such extent or in such amounts as are provided in appropriations Acts.

(B) Of the amount appropriated under section 501(a), the Secretary shall also retain $7,000,000 in fiscal year 1987, $7,500,000 in fiscal year 1988, and $8,000,000 in fiscal year 1989 for the purpose of carrying out (through grants, contracts, or otherwise) projects for the screening of newborns for sickle-cell anemia and other genetic disorders.

* * * * * * *

TITLE XIX—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

* * * * * * *

STATE PLANS FOR MEDICAL ASSISTANCE

SEC. 1902. (a) A State plan for medical assistance must—

(1) * * *

* * * * * * *

(10) provide—

(A) for making medical assistance available, including at least the care and services listed in paragraphs (1) through (5) and (17) of section 1905(a), to—

(i) all individuals—

(I) * * *

(II) with respect to whom supplemental security income benefits are being paid under title XVI *or who are qualified severely impaired individuals (as defined in section 1905(2))*, or

* * * * * * *

(ii) at the option of the State, to any group or groups of individuals described in section 1905(a) (or, in the case of individuals described in section 1905(a)(i), to any reasonable categories of such individuals) who are not individuals described in clause (i) of this subparagraph but—

(I) * * *

(VII) who would be eligible under the State plan under this title if they were in a medical institution, who are terminally ill, and who will receive hospice care pursuant to a voluntary election described in section 1905(o) **[**, or**]***;*

(VII) who is a child described in section 1905(a)(i)—

(aa) for whom there is in effect an adoption assistance agreement (other than an agreement under part E of title IV) between the State and an adoptive parent or parents,

(bb) who the State agency responsible for adoption assistance has determined cannot be placed with adoptive parents without medical assistance because such child has special needs for medical or rehabilitative care, and

(cc) who was eligible for medical assistance under the State plan prior to the adoption assistance agreement being entered into, or who would have been eligible for medical assistance at such time if the eligibility standards and methodologies of the State's foster care program under part E of title IV were applied rather than the eligibility standards and methodologies of the State's aid to families with dependent children program under part A of title IV;

(IX) subject to subsection (l)(4), who are described in subsection (l)(1), or

(X) subject to subsection (m)(3), who are described in subsection (m)(1);

* * * * * * *

(C) that if medical assistance is included for any group of individuals described in section 1905(a) who were not described in subparagraph (A) *or (E)*, then—

(i) * * *

* * * * * * *

(iv) if such medical assistance includes services in institutions for mental diseases or intermediate care facility services for the mentally retarded (or both) for any such group, it also must include for all groups covered at least the care and services listed in paragraphs (1) through (5) and (17) of section 1905(a) or the care and services listed in any 7 of the paragraphs numbered (1) through **[**(18)**]** *(19)* of such section; **[**and**]**

(D) for the inclusion of home health services for any individual who, under the State plan, is entitled to skilled nursing facility services; *and*

(E) at the option of a State but subject to subsection (m)(3), for making medical assistance available for medicare cost-sharing (as defined in section 1905(p)(3)) for qualified medicare beneficiaries described in section 1905(p)(1);

except that (I) the making available of the services described in paragraph (4), (14), or (16) of section 1905(a) to individuals meeting the age requirements prescribed therein shall not, by reason of this paragraph (10), require the making available of any such services, or the making available of such services of the same amount, duration, and scope, to individuals of any other ages, (II) the making available of supplementary medical insurance benefits under part B of title XVIII to individuals eligible therefor (either pursuant to an agreement entered into under section 1843 or by reason of the payment of premiums under such title by the State agency on behalf of such individuals), or provision for meeting part or all of the cost of deductibles, cost sharing, or similar charges under part B of title XVIII for individuals eligible for benefits under such part, shall not, by reason of this paragraph (10), require the making available of any such benefits, or the making available of services of the same amount, duration, and scope, to any other individuals, (III) the making available of medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in clause (A) to any classification of individuals approved by the Secretary with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect to them, a State supplementary payment shall not, by reason of this paragraph (10), require the making available of any such assistance, or the making available of such assistance of the same amount, duration, and scope, to any other individuals not described in clause (A), (IV) the imposition of a deductible, cost sharing, or similar charge for any item or service furnished to an individual not eligible for the exemption under section 1916(a)(2) or (b)(2) shall not require the imposition of a deductible, cost sharing, or similar charge for the same item or service furnished to an individual who is eligible for such exemption, (V) the making available to pregnant women covered under the plan of services relating to pregnancy (including prenatal, delivery, and postpartum services) or to any other condition which may complicate pregnancy shall not, by reason of this paragraph (10), require the making available of such services, or the making available of such services of the same amount, duration, and scope, to any other individuals, provided such services are made available (in the same amount, duration, and scope) to all pregnant women covered under the State plan, **[**and**]** (VI) with respect to the making available of medical assistance for hospice care to terminally ill individuals who have made a voluntary election described in section 1905(o) to receive hospice care instead of medical assistance for certain other services, such assistance may not be made available in an amount, duration, or scope less than that provided under title XVIII, and the making available of such assistance shall not, by reason of this paragraph (10), require the making available of medical assistance for hospice care to other individuals or the making available of medical assistance for services waived by such terminally ill individuals, *(VII) the medical assistance made available to an individual described in subsection (l)(1)(A) who is eligible for medical assistance only because of subparagraph (A)(ii)(IX) shall be limited to medical assistance for services related to pregnancy (including prenatal, delivery, and postpartum services) and to other conditions which may complicate pregnancy, and (VIII) the medical assistance made available to a qualified medicare beneficiary described in section 1905(p)(1) shall be limited to medical assistance for medicare cost-sharing (described in section 1905(p)(3)), subject to the provisions of subsection (n) and section 1916(b);*

(13) provide—

(A) * * *

* * * * * * *

(D) for payment for hospice care in the same amounts, and using the same methodology, as used under part A of title XVIII; except that a separate rate may be paid for hospice care which is furnished to an individual who is a resident of a skilled nursing facility or intermediate care facility, and who would be eligible under the plan for skilled nursing facility services or intermediate care facility services if he had not elected to receive hospice care, to take into account the room and board furnished by such facility; *and*

* * * * * * *

(15) in the case of eligible individuals 65 years of age or older who *are not qualified medicare beneficiaries (as defined in section 1905(p)(1)) but* are covered by either or both of the insurance programs established by title XVIII, provide where, under the plan, all of any deductible, cost sharing, or similar charge imposed with respect to such individual under the insurance program established by such title is not met, the portion thereof which is met shall be determined on a basis reasonably related (as determined in accordance with standards approved by the Secretary and included in the plan) to such individual's income or his income and resources;

* * * * * * *

(17) *except as provided in subsection (l)(3),* include reasonable standards (which shall be comparable for all groups and may, in accordance with standards prescribed by the Secretary, differ with respect to income levels, but only in the case of applicants or recipients of assistance under the plan who are not receiving aid or assistance under any plan of the State approved under title I, X, XIV, or XVI, or part A of title IV, and with respect to whom supplemental security income benefits are not being paid under title XVI, based on the variations be-

tween shelter costs in urban areas and in rural areas) for determining eligibility for and the extent of medical assistance under the plan which (A) are consistent with the objectives of this title, (B) provide for taking into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary, available to the applicant or recipient and (in the case of any applicant or recipient who would, except for income and resources, be eligible for aid or assistance in the form of money payments under any plan of the State approved under title I, X, XIV, or XVI, or part A of title IV, or to have paid with respect to him supplemental security income benefits under title XVI) as would not be disregarded (or set aside for future needs) in determining his eligibility for such aid, assistance, or benefits, (C) provide for reasonable evaluation of any such income or resources, and (D) do not take into account the financial responsibility of any individual or any applicant or recipient of assistance under the plan unless such applicant or recipient is such individual's spouse or such individual's child who is under age 21 or (with respect to States eligible to participate in the State program established under title XVI), is blind or permanently and totally disabled, or is blind or disabled as defined in section 1614 (with respect to States which are not eligible to participate in such program); and provide for flexibility in the application of such standards with respect to income by taking into account, except to the extent prescribed by the Secretary, the costs (whether in the form of insurance premiums or otherwise) incurred for medical care or for any other type of remedial care recognized under State law;

* * * * * * *

(30)(A) * * *

* * * * * * *

(C) provide a utilization and quality control peer review organization (under part B of title XI) or a private accreditation body to conduct (on an annual basis) an independent, external review of the quality of services furnished under each contract under section 1903(m), with the results of such review made available to the State and, upon request, to the Secretary, the Inspector General in the Department of Health and Human Services, and the Comptroller General;

* * * * * * *

The requirement of clause" (A) of paragraph (37) with respect to a State plan may be waived by the Secretary if he finds that the State has execrised good faith in trying to meet such requirement. For purposes of this title, any child who meets the requirements of paragraph (1) or (2) of section 473(b) shall be deemed to be a dependent child as defined in section 406 and shall be deemed to be a recipient of aid to families with dependent children under part A of title IV in the State where such child resides. *Notwithstanding paragraph (10) or any other provision of this subsection, nothing in this title shall be construed as requiring a State plan to provide medical assistance with respect to an alien who is not lawfully ad-*

mitted for permanent residence or otherwise permanently residing in the United States under color of law.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for medical assistance under the plan—

(1) an age requirement of more than 65 years; or

(2) any residence requirement which excludes any individual who resides in the State, *regardless of whether or not the residence is maintained permanently or at a fixed address;* or

* * * * * * *

(d) If a State contracts with a utilization and quality control peer review organization having a contract with the Secretary under part B of title XI for the performance of medical or utilization review functions *(including quality review functions described in subsection (a)(30)(C))* required under this title of a State plan with respect to specific services or providers (or services or providers in a geographic area of the State), such requirements shall be deemed to be met for those services or providers (or services or providers in that area) by delegation to such organization (or organizations) under the contract of the State's authority to conduct such review activities if the contract provides for the performance of activities not inconsistent with part B of title XI and provides for such assurances of satisfactory performance by such organization (or organizations) as the Secretary may prescribe.

(e)(1) * * *

* * * * * * *

(6) At the option of a State, if a State plan provides medical assistance for individuals under subsection (a)(10)(A)(ii)(IX), the plan may provide that any woman described in such subsection and subsection (l)(1)(A) shall continue to be treated as an individual described in subsection (a)(10)(A)(ii)(IX) without regard to any change in income of the family of which she is a member until the end of the 60-day period beginning on the last date of her pregnancy.

(7) If a State plan provides medical assistance for individuals under subsection (a)(10)(A)(ii)(IX), in the case of an infant described in subsection (l)(1)(B)—

(A) who is receiving inpatient services for which medical assistance is provided on the date the infant becomes one year of age, and

(B) who, but for becoming one year of age, would remain eligible for medical assistance as under such subsection,

the infant shall continue to be treated as an individual described in subsections (a)(10)(A)(ii)(IX) and (l)(1)(B) until the end of the stay for which the inpatient services are furnished.

(8) If an individual is determined to be a qualified medicare beneficiary (as defined in section 1905(p)(1)), such determination shall apply to services furnished after the end of the month in which the determination first occurs. For purposes of payment to a State under section 1903(a), such determination shall be considered to be valid for an individual for a period of 12 months, except that a State may

provide for such determinations more frequently, but not more frequently than once every 6 months for an individual.

(h)(1) Nothing in this title (including subsections (a)(13) and (a)(30) of this section) shall be construed as authorizing the Secretary to limit the amount of payment that may be made under a plan under this title with respect to inpatient hospital services, skilled nursing facility services, or intermediate care facility services, including any such limitation relating to the amount that can reasonably be estimated would have been paid for such services under the reimbursement principles applicable under title XVIII.

(2) Nothing in this title (including subsections (a)(4) and (a)(30) of this section) shall be construed as authorizing the Secretary to require that States operate second surgical opinion programs or inpatient hospital preadmission review programs.

* * * * * * *

(j) Notwithstanding any other requirement of this title, the Secretary may waive or modify any requirement of this title with respect to the medical assistance program in American Samoa, other than a waiver of the Federal medical assistance percentage, the limitation in section 1108(c), or the requirement that payment may be made for medical assistance only with respect to amounts expended by American Samoa for care and services described in paragraphs (1) through **[**(19)**]** *(20)* of section 1905(a).

* * * * * * *

(l)(1) An individual described in this paragraph is—

(A) a woman during pregnancy (and during the 60-day period beginning on the last date of her pregnancy), and

(B) an infant under one year of age or, in the case described in subsection (e)(7), older,

who is not described in subsection (a)(10)(A)(i) and whose family income does not exceed the maximum income level established by the State under paragraph (2) for a family size equal to the size of the family including the woman or infant. A State may not elect, under subsection (a)(10)(A)(ii)(IX), to cover only individuals described in subparagraph (A) or to cover only individuals described in subparagraph (B).

(2)(A) For purposes of paragraph (1) and subject to subparagraph (B), the State shall establish a maximum income level which is a percentage (not more than 100 percent) of the nonfarm income official poverty line defined by the Office of Management and Budget (and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

(B) The maximum income level established under subparagraph (A) for a family may not be less than the payment level applicable to a family of that size and with no income under the State plan approved under part A of title IV.

(3) Notwithstanding subsection (a)(17), for individuals who are eligible for medical assistance because of subsection (a)(10)(A)(ii)(IX) or coverage under subsection (a)(10)(E)—

(A)(i) no resource standard or methodology may be applied with respect to an individual described in paragraph (1)(A),

(ii) any resource standard or methodology which is applied with respect to an individual described in paragraph (1)(B) may not be more restrictive than the corresonding resource standard or methodology which is applied under the State plan under part A of title IV,

(B) the income standard to be applied is the income standard established under paragraph (2), and

(C) family income shall be determined in accordance with the methodology employed under the State plan under part A of title IV (without regard to section 402(a)(18)), and costs incurred for medical care or for any other type of remedial care shall not be taken into account.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17), require or permit such treatment for other individuals.

(4) A State plan may not elect the option of furnishing medical assistance to individuals described in subsection (a)(10)(A)(ii)(IX) unless the State has in effect, under its plan established under part A of title IV, payment levels that are not less than the payment levels in effect under its plan on April 17, 1986.

(5) Notwithstanding subsection (a)(17), for qualified medicare beneficiaries described in section 1905(o)(1)—

(A) the income standard to be applied is the income standard described in section 1905(p)(1)(C), and

(B) except as provided in section 1612(b)(4)(B)(ii), costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17), require or permit such treatment for other individuals.

(m)(1) Individuals described in this paragraph are individuals—

(A) who are 65 years of age or older or are disabled individuals (as determined under section 1614(a)(3)),

(B) whose income (as determined under section 1612 for purposes of the supplemental security income program) does not exceed an income level established by the State consistent with paragraph (2)(A), and

(C) whose resources (as determined under section 1613 for purposes of the supplemental security income program) do not exceed (except as provided in paragraph (2)(B)) the maximum amount of resources that an individual may have and obtain benefits under that program.

(2)(A) The income level established under paragraph (1)(B) may not exceed a percentage (not more than 100 percent) of the nonfarm official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

(B) In the case of a State that provides medical assistance to individuals not described in section 1902(a)(10)(A) and at the State's option, the State may use under paragraph (1)(C) such resource level (which is higher than the level described in that paragraph) as may be applicable with respect to individuals described in paragraph (1)(A) who are not described in section 1902(a)(10)(A).

(3) A State plan may not provide coverage for individuals under subsection (a)(10)(A)(ii)(X), unless the plan provides coverage of some of the individuals described in subsection (l)(1).

(4) Notwithstanding subsection (a)(17), for individuals described in paragraph (1) who are covered under the State plan by virtue of subsection (a)(10)(A)(ii)(X)—

(A) the income standard to be applied is the income standard described in paragraph (1)(B), and

(B) except as provided in section 1612(b)(4)(B)(ii), costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17), require or permit such treatment for other individuals.

(n) In the case of medical assistance furnished under this title for medicare cost-sharing respecting the furnishing of a service or item to a qualified medicare beneficiary, the State plan may provide payment in an amount with respect to the service or item that results in the sum of such payment amount and any amount of payment made under title XVIII with respect to the service or item exceeding the amount that is otherwise payable under the State plan for the item or service for eligible individuals who are not qualified medicare beneficiaries.

(o) In applying subsection (a)(17) and notwithstanding any provision in that subsection to the contrary, in determining the income and resources of an individual who is in an institution, the individual shall not be considered to have available to him or her income or resources which are required to be paid under court order for the support of the individual's spouse or child.

PAYMENT TO STATES

SEC. 1903. (a) From the sums appropriated therefor, the Secretary (except as otherwise provided in this section) shall pay to each State which has a plan approved under this title, for each quarter, beginning with the quarter commencing January 1, 1966—

(1) an amount equal to the Federal medical assistance percentage (as defined in section 1905(b), subject to subsections (g), (h), and (j) of this section) of the total amount expended during such quarter as medical assistance under the State plan (including expenditures for *deductible amounts under part A and* premiums under part B *(and, in the case of qualified medicare beneficiaries described in section 1905(p)(1), part A)* of title XVIII, for individuals who are eligible for medical assistance under the plan and (A) are receiving aid or assistance under any plan of the State approved under title I, X, XIV, or XVI, or part A of title IV, or with respect to whom supplemental security income benefits are being paid under title XVI, or (B) *are qualified medicare beneficiaries described in section 1905(p)(1), or (C)* with respect to whom there is being paid a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1902(a)(10)(A), and, except in the case of individuals sixty-five

years of age or older and disabled individuals entitled to hospital insurance benefits under title XVIII who are not enrolled under part B of title XVIII, other insurance premiums for medical or any other type of remedial care or the cost thereof); plus

* * * * * * *

(3) an amount equal to
(A) * * *

* * * * * * *

(C) 75 per centum of the sums expended with respect to costs incurred during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to the performance of medical and utilization review *or quality review* by a utilization and quality control peer review organization under a contract entered into under section 1902(d); plus

* * * * * * *

(f)(1) * * *

* * * * * * *

(4) The limitations on payment imposed by the preceding provisions of this subsection shall not apply with respect to any amount expended by a State as medical assistance *for any individual described in section 1902(a)(10)(A)(ii)(IX) or* for any individual—
(A) * * *

* * * * * * *

(i) Payment under the preceding provisions of this section shall not be made—

* * * * * * *

(7) with respect to any amount expended for clinical diagnostic laboratory tests performed by a physician, independent laboratory, or hospital, to the extent such amount exceeds the amount that would be recognized under section 1833(h) for such tests performed for an individual enrolled under part B of title XVIII**[**.**]***; or*

(8) for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or permanently residing in the United States under color of law.

* * * * * * *

(m)(1) * * *

(2)(A) Except as provided in subparagraphs (B), (C), and (G), no payment shall be made under this title to a State with respect to expenditures incurred by it for payment (determined under a prepaid capitation basis or under any other risk basis) for services provided by any entity (including a health insuring organization) which is responsible for the provision (directly or through arrangements with providers of services) of inpatient hospital services and any other service described in paragraph (2), (3), (4), (5), or (7) of section 1905(a) or for the provision of any three or more of the services described in such paragraphs unless—

(i) * * *

(iii) such services are provided for the benefit of individuals eligible for benefits under this title in accordance with a contract between the State and the entity under which prepaid payments to the entity are made on an actuarially sound basis *and under which the Secretary must provide prior approval for contracts providing for expenditures in excess of $100,000*;

* * * * * * *

(vi) such contract (I) except as provided under subparagraph (F), permits individuals who have elected under the plan to enroll with the entity for provision of such benefits to terminate such enrollment without cause as of the beginning of the first calendar month following a full calendar month after the request is made for such termination, and (II) provides for notification of each such individual, at the time of the individual's enrollment, of such right to terminate such enrollment; [and]

(vii) such contract provides that, in the case of medically necessary services which were provided (I) to an individual enrolled with the entity under the contract and entitled to benefits with respect to such services under the State's plan and (II) other than through the organization because the services were immediately required due to an unforeseen illness, injury, or condition, either the entity or the State provides for reimbursement with respect to these services[.]*, and*

(viii) such contract provides for disclosure of information in accordance with section 1124 and paragraph (4) of this subsection.

* * * * * * *

(F) [in] *In* the case of a contract with an entity described in subparagraph (G) or with a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act) which meets the requirement of subparagraph (A)(ii), a State plan may restrict the period in which requests for termination of enrollment without cause under subparagraph (A)(vi)(I) are permitted to the first month of each period of enrollment, each such period of enrollment not to exceed six months in duration, but only if the State provides notification, at least twice per year, to individuals enrolled with such entity or organization of the right to terminate such enrollment and the restriction on the exercise of this right. Such restriction shall not apply to requests for termination of enrollment for cause.

* * * * * * *

(4)(A) Each health maintenance organization which is not a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act) must report to the State and, upon request, to the Secretary, the Inspector General of the Department of Health and Human Services, and the Comptroller General a description of transactions between the organization and a party in interest (as defined in section 1318(b) of such Act), including the following transactions:

(i) Any sale or exchange, or leasing of any property between the organization and such party.

(ii) Any furnishing for consideration of goods, services (including management services), or facilities between the organization and such a party, but not including salaries paid to employees for services provided in the normal course of their employment.

(iii) Any lending of money or other extension of credit between the organization and such a party.

The State or Secretary may require that information reported respecting an organization which controls, or is controlled by, or is under common control with, another entity be in the form of a consolidated financial statement for the organization and such entity.

(B) Each organization shall make the information reported pursuant to subparagraph (A) available to its enrollees upon reasonable request.

* * * * * * *

(q) For the purposes of this section, the term "State medicaid fraud control unit" means a single identifiable entity of the State government which the Secretary certifies (and annually recertifies) as meeting the following requirements:

(1) * * *

* * * * * * *

The Secretary shall provide (or continue to provide) for the delegation of the Secretary's authority under this subsection to the Inspector General in the Department of Health and Human Services.

* * * * * * *

DEFINITIONS

SEC. 1905. For purposes of this title—

(a) The term "medical assistance" means payment of part or all of the cost of the following care and services (if provided in or after the third month before the month in which the recipient makes application for assistance *or, in the case of a qualified medicare beneficiary described in section 1905(p)(1), if provided after the month in which the individual becomes such a beneficiary*) for individuals, and, with respect to physicians' or dentists' services, at the option of the State, to individuals (other than individuals with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1902(a)(10)(A)) not receiving aid or assistance under any plan of the State approved under title I, X, XIV, or XVI, or part A of title IV, and with respect to whom supplemental security income benefits are not being paid under title XVI, who are—

(i) * * *

* * * * * * *

(viii) pregnant women,

but whose income and resources are insufficient to meet all of such cost—

(1) * * *

* * * * * * *

(18) hospice care (as defined in subsection (o)); [and]

(19) case-management services (as defined in section 1915(g)(2)); and

[(19)] *(20)* any other medical care, and any other type of remedial care recognized under state law, specified by the Secretary;

* * * * * * *

(p)(1) The term "qualified medicare beneficiary" means an individual—

(A) who is entitled to hospital insurance benefits under part A of title XVIII (including an individual entitled to such benefits pursuant to an enrollment under section 1818),

(B) who, but for section 1902(a)(10)(E) and the election of the State, is not eligible for medical assistance under the plan,

(C) whose income (as determined under section 1612 for purposes of the supplemental security income program) does not exceed an income level established by the State consistent with paragraph (2)(A), and

(D) whose resources (as determined under section 1613 for purposes of the supplemental security income program) do not exceed (except as provided in paragraph (2)(B)) the maximum amount of resources that an individual may have and obtain benefits under that program.

(2)(A) The income level established under paragraph (1)(C) may not exceed a percentage (not more than 100 percent) of the nonfarm official proverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

(B) In the case of a State that provides medical assistance to individuals not described in section 1902(a)(10)(A) and at the State's option, the State may use under paragraph (1)(D) such resource level (which is higher than the level described in that paragraph) as may be applicable with respect to individuals described in paragraph (1)(A) who are not described in section 1902(a)(10)(A).

(3) The term "medicare cost-sharing" means that following costs incurred with respect to a qualified medicare beneficiary:

(A) Premiums under part B.

(B) Deductibles and coinsurance described in section 1813.

(C) The annual deductible described in section 1833(b).

(D) The difference between the amount that is paid under section 1833(a) and the amount that would be paid under such section if any reference to "80 percent" therein were deemed a reference to "100 percent".

Such term also may include, at the option of a State, premiums for enrollment of a qualified medicare beneficiary with an eligible organization under section 1876.

(q) The term "qualified severely impaired individual" means an individual under age 65—

(1) who received (A) a payment of supplemental security income benefits under section 1611(b) on the basis of blindness or disability, (B) a supplementary payment under section 1616 of this Act or under section 212 of Public Law 93-66 on such basis, (C) a payment of monthly benefits under section 1619(a), or (D) a suplementary payment under section 1616(c)(3), and

(2) for so long as the Secretary determines that—

(A) the individual continues to be blind or continues to have the disabling physical or mental impairment on the basis of which he was found to be under a disability and, except for his earnings, continues to meet all non-disability-related requirements for eligibility for benefits under title XVI,

(B) the income of such individual would not, except for his earnings, be equal to or in excess of the amount which would cause him to be ineligible for payments under section 1611(b) (if he were otherwise eligible for such payments),

(C) the lack of eligibility for benefits under this title would seriously inhibit his ability to continue or obtain employment, and

(D) the individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the benefits under title XVI and this title and attendant care paid for under title XX which would be available to him in the absence of such earnings.

PROVISIONS RESPECTING INAPPLICABILITY AND WAIVER OF CERTAIN REQUIREMENTS OF THIS TITLE

SEC. 1915.(a) * * *

(c)(1) The Secretary may by waiver provide that a State plan approved under this title may include as "medical assistance" under such plan payment for part or all of the cost of home or community-based services (other than room and board) approved by the Secretary which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would require the level of care provided in a skilled nursing facility or intermediate care facility the cost of which could be reimbursed under the State plan or but for the provision of such services the individuals would continue to receive inpatient hospital services, skilled nursing facility services, or intermediate care facility services because they are dependent on ventilator support the cost of which is reimbursed under the State plan *or because they have been diagnosed as having acquired immune deficiency syndrome (AIDS) or AIDS-related conditions the cost of treatment with respect to which is reimbursed under the State plan or because they have chronic mental illness the cost of treatment with respect to which is reimbursed under the State plan.*

* * * * * * *

(3) A waiver granted under this subsection may include a waiver of the requirements of section 1902(a)(1) (relating to statewideness [and section 1902(a)(10). A waiver under this subsection shall be for an initial term of three years and, upon request of a State, shall

be extended for additional three-year periods unless the Secretary determines that for the previous three-year period the assurances provided under paragraph (2) have not been met,] *and section 1902(a)(10)(B) (relating to comparability of medical assistance).*

* * * * * * *

(4) A waiver granted under the subsection may, consistent with paragraph (2)—

* * * * * * *

(B) provide medical assistance to individuals (to the extent consistent with written plans of care, which are subject to the approval of the State) for case management services, homemaker/home health aide services and personal care services, adult day health services, habilitation services, respite care, and such other services requested by the State as the Secretary may approve *and for day treatment or other partial hospitalization services, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness*

(5) For purposes of paragraph (4)(B), the term 'habilitation services', with respect to individuals who receive such services after discharge from a skilled nursing facility or intermediate care facility—

(A) means services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community based settings; and

(B) includes (except as provided in subparagraph (C) prevocational, educational, and supported employment services; but

(C) does not include—

(i) special education related services (as defined in section 602(16) and (17) of the Education of the Handicapped Act (20 U.S.C. 1401(16), (17)) which otherwise are available to the individual through a local educational agency; and

(ii) vocational rehabilitation services which otherwise are available to the individual through a program funded under section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).

(6) The Secretary may not require, as a condition of approval of a waiver under this section under paragraph (2)(D), that the actual total expenditures for home and community-based services under the waiver (and a claim for Federal financial participation in expenditures for the services) cannot exceed the approved estimates for these services. The Secretary may not deny Federal financial payment with respect to services under such a waiver on the ground that, in order to comply with paragraph (2)(D), a State has failed to comply with such a requirement.

(7) *(A)* In making estimates under paragraph (2)(D) in the case of a waiver which applies only to physicially disabled individuals who are inpatients in skilled nursing or intermediate care facilities, the State may determine the average per capita expenditure which would have been made in fiscal year for those individuals under

the State plan separately from the expenditure for other individuals who are inpatients of those facilities.

(B) In making estimates under paragraph (2)(D) in the case of a waiver which applies only to individuals with acquired immune deficiency syndrome (AIDS), or with AIDS-related conditions, or with either, who are inpatients in hospitals or in skilled nursing or intermediate care facilities, the State may determine the average per capita expenditure which would have been made in a fiscal year for those individuals under the State plan separately from the expenditures for other individuals who are inpatients of those respective facilities.

(C) In making estimates under paragraph (2)(D) in the case of a waiver which applies only to individuals with chronic mental illness, who are inpatients in hospitals or in skilled nursing or intermediate care facilities, the State may determine the average per capita expenditure which would have been made in a fiscal year for those individuals under the State plan separately from the expenditure for other individuals who are inpatients of those respective facilities.

* * * * * * *

(d) No waiver under this section (other than a waiver under subsection (c)) may extend over a period of longer than two years unless the State requests continuation of such waiver, and such request shall be deemed granted unless the Secretary denies such request in writing within 90 days after the date of its submission to the Secretary.

(e)(1) The Secretary shall monitor the implementation of waivers granted under this section to assure that the requirements for such waiver are being met and shall, after notice and opportunity for a hearing, terminate any such waiver where he finds noncompliance has occurred.

(2) The Secretary shall report, not later than September 30, 1984, to Congress on waivers granted under this section.

(f) A request to the Secretary from a State for approval of a proposed State plan or plan amendment or a waiver of a requirement of this title submitted by the State pursuant to a provision of this title shall be deemed granted unless the Secretary, within 90 days after the date of its submission to the Secretary, either denies such request in writing or informs the State agency in writing with respect to any additional information which is needed in order to make a final determination with respect to the request. After the date the Secretary receives such additional information, the request shall be deemed granted unless the Secretary, within 90 days of such date, denies such request.

(g)(1) A State may provide, as medical assistance, case management services under the plan without regard to the requirements of section 1902(a)(1) and section 1902(a)(10)(B). The provision of case management services under this subsection shall not restrict the choice of the individual to receive medical assistance in violation of section 1902(a)(23).

(2) For purposes of this subsection, the term "case management services" means services which will assist individuals eligible

under the plan in gaining access to needed medical, social, educational, and other services.

A State may limit the provision of case management services under this subsection to individuals with acquired immune deficiency syndrome (AIDS), or with AIDS-related conditions, or with either.

A State may limit the provision of case management services under this subsection to individuals with chronic mental illness.

USE OF ENROLLMENT FEES, PREMIUMS, DEDUCTIONS, COST SHARING, AND SIMILAR CHARGES

Sec. 1916. [42 U.S.C. 1396o] (a) The State plan shall provide that in the case of individuals described in [section 1902(a)(10)(A)] *subparagraph (A) or (E) of section 1902(a)(10) who are eligible under the plan*—

(1) no enrollment fee, premium, or similar charge will be imposed under the plan;

(2) no deduction, cost sharing or similar charge will be imposed under the plan with respect to—

(A) * * *

* * * * * * *

(D) emergency services (as defined by the Secretary), famnily planning services and supplies described in section 1905(a)(4)(C), or services furnished to such an individual by a health maintenance organization (as defined in section 1903(m) in which he is enrolled, or;

(E) services furnished to an individual who is receiving hospice care (as defined in section 1905(o)); and

(b) The State plan shall provide that in the case of individuals other than those described in section [1902(a)(10)(A)] *subparagraph (A) or (E) of section 1902(a)(10)* who are eligible under the plan—

(1) there may be imposed an enrollment fee, premium, or similar charge, which (as determined in accordance with standards prescribed by the Secretary) is related to the individual's income,

(2) no deduction, cost sharing, or similar charge will be imposed under the plan with respect to—

(A) * * *

* * * * * * *

(D) emergency services (as defined by the Secretary), family planning services and supplies described in section 1905(a)(4)(C), or (at the option of the State) services furnished to such an individual by a health maintenance organization (as defined in section 1903(M)) in which he is enrolled, or:

(E) services furnished to an individual who is receiving hospice care (as defined in section 1905(o)); and

* * * * * * *

"CORRECTION AND REDUCTION PLANS FOR INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

Sec. 1919. (a) * * *

* * * * * * *

(c) The reduction plan must—

(1) * * *

* * * * * * *

(6) provide that the ratio of qualified staff to residents at the affected facility (or the part thereof) which is subject to the reduction plan will be the higher of—

(A) the ratio which the Secretary determines is necessary in order to assure the health and safety of the residents of such facility (or part thereof); or

(B) the ratio which was in effect at the time that the finding of substantial deficiencies (referred to in subsection (a)) was made; [and]

(7) provide for the protection of the interests of employees affected by actions under the reduction plan, including—

(A) arrangements to preserve employee rights and benefits;

(B) training and retraining of such employees where necessary;

(C) redeployment of such employees to community settings under the reduction plan; and

(D) making maximum efforts to guarantee the employment of such employees (but this requirements shall not be construed to guarantee the employment of any employee; and

(8) assure that the existing facility continues to provide active treatment (described in section 1905(d)(2) to the remaining residents during the phaseout period.

* * * * * * *

(3) FOSTER CARE AND ADOPTION ASSISTANCE.—[Section 473(b)] *Sections 472(h) and 473(b)* of this Act (relating to medical assistance for children in foster care and for adopted children).

* * * * * * *

REFERENCES TO LAWS DIRECTLY AFFECTING MEDICAID PROGRAM

Sec. 1920. (a) AUTHORITY OR REQUIREMENTS TO COVER ADDITIONAL INDIVIDUALS.—For provisions of law which make additional individuals eligible for medical assistance under this title, see the following:

(1) AFDC.—(A) *Section 482(a)(32) of this Act (relating to individuals who are deemed recipients of aid but for whom a payment is not made).*

(B) Section 402(a)(37) of this Act (relating to individuals who lose AFDC eligibility due to increased earnings).

[(B)] *(C)* Section 406(h) of this Act (relating to individuals who lose AFDC eligibility due to increased collection of child or spousal support).

[(C)] *(D)* Section 414(g) of this Act (relating to individuals participating in work supplementation programs).

(2) SSI.—*(A) Section 1634(b) of this Act (relating to preservation of benefit status for disabled widows and widowers who lost SSI benefits because of 1983 changes in actuarial reduction formula).*

(B) Section 1619 of this Act (relating to benefits for individuals who perform substantial gainful activity despite severe medical impairment).

* * * * * * *

Consolidated Omnibus Budget Reconciliation Act of 1985

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Part 4—Peer Review Organizations

* * * * * * *

Subtitle B—Medicaid and Maternal and Child Health

* * * * * * *

SEC. 9506. TREATMENT OF POTENTIAL PAYMENTS FROM MEDICAID QUALIFYING TRUSTS.

(a) * * *

* * * * * * *

(c) Exception.—The amendment made by subsection (a) shall not apply to any trust or initial trust decree established prior to April 7, 1986, solely for the benefit of a mentally retarded individual who resides in an intermediate care facility for the mentally retarded.

* * * * * * *

SEC. 9517. MODIFYING APPLICATION OF MEDICAID HMO PROVISIONS FOR CERTAIN HEALTH CENTERS.

(a) * * *

* * * * * * *

(c) Health Insuring Organizations. * * *

(2)(A) Except as provided in subparagraph (B), the amendments made by paragraph (1) shall apply to expenditures incurred for health insuring organizations which first become operational on or after January 1, 1986.

For purposes of this paragraph, a health insuring organization is not considered to be operational until the date on which it first enrolls patients.

* * * * * * *

(B) In the case of a health insuring organization—

(i) which first becomes operational on or after January 1, 1986, but

(ii) for which the Secretary of Health and Human Services has waived, under section 1915(b) of the Social Security Act and before such date, certain requirements of section 1902 of such Act, clauses (ii) and **[**(iv)**]** *(vi)* of section 1903(m)(2)(A) of such Act shall not apply during the period for which such waiver is effective.

(C) In the case of the Hartford Health Network, Inc., clauses (ii) and (vi) of section 1903(m)(2)(A) of the Social Security Act shall not apply during the period for which a waiver by the Secretary of Health and Human Services, under section 1915(b) of such Act, of certain requirements of section 1902 of such Act is in effect (pursuant to a request for a waiver under section 1915(b) of such Act submitted before January 1, 1986).

* * * * * * *

SEC. 9528. ANNUAL CALCULATION OF FEDERAL MEDICAL ASSISTANCE PERCENTAGE.

(a) ANNUAL CALCULATION.—Section **[**1101(a)(8)(P)**]** *1101(a)(8)(B)* of the Social Security Act is amended—

(1) by striking out "even-numbered"; and

(2) by striking out "eight quarters" and inserting in lieu thereof "four quarters".

* * * * * * *

(c) HOLD HARMLESS PROVISION.—Notwithstanding subsection (b), for calendar quarters occurring during fiscal year 1987 and only for purposes of making payments to States under sections 403 and 1903 of the Social Security Act, the amendments made by subsection (a) shall not apply to a State if the effect of the applying the amendments would be to reduce the amount of payment made to the State under that section.

OMNIBUS BUDGET RECONCILIATION ACT OF 1981

* * * * * * *

Subtitle C—Provisions Relating to Medicaid

* * * * * * *

CHAPTER 2—INCREASED FLEXIBILITY FOR STATES

* * * * * * *

REIMBURSEMENT OF HOSPITALS

SEC. 2173. (a)(1) * * *

* * * * * * *

(d) Section 1902 of such Act is further amended by inserting before subsection (i) the following new subsection:

"(h) Nothing in this title (including subsections (a)(13) and (a)(30) of this section) shall be construed as authorizing the Secretary to limit the amount of payments that may be made under a plan under this title with respect to inpatient hospital services, skilled nursing facility services, or intermediate care facility services, including any such limitation relating to the amount that can reasonably be estimated would have been paid for such services under the reimbursement principles applicable under title XVIII.".

MINORITY VIEWS ON MEDICARE AND MEDICAID RECONCILIATION AMENDMENTS FOR FISCAL YEAR 1987

We are compelled to register our strong opposition to the Committee's Medicare and Medicaid Budget Reconciliation Legislation for Fiscal Year 1987. This bill falls far short of achieving the savings required by the Budget Resolution (S. Con. Res. 120) adopted by both the House and Senate on June 26, 1986. The minimal savings that are achieved through changes to the Medicare program are significantly reduced by many provisions which will increase Federal spending in both of the entitlement programs under the Committee's jurisdiction. There may be merit to the spending proposals contained in this legislation, but a reconciliation bill is an inappropriate context in which to incorporate them.

The Committee on Energy and Commerce's budget reconciliation instructions included in the Budget Resolution for FY 1987 called for savings in the Medicare program of $500 million in 1987 and $3.25 billion over a three year period. Although the budget does not specify how this savings target is to be achieved, it does assume that provider reforms will be enacted that will not increase beneficiary costs or reduce services. As in past years, the reconciliation instructions regarding the Medicare program are the same for both the Committee on Ways and Means and the Committee on Energy and Commerce. The Budget Committee assumes that the two Committees will jointly meet the savings targets through reforms to the portions of the Medicare program under each Committee's jurisdiction.

S. Con. Res. 120 does provide for certain expansions to the Medicaid program and the Maternal and Child Health (MCH) Block Grant, but it does not specify that these changes should be part of the Committee's reconciliation package. Without specific instructions, we believe it is inappropriate for this or any other Committee to use legislation that is purposefully drafted to achieve savings in a program as a vehicle for authorizing new spending in a different program. Separate legislation expanding the Medicaid and MCH Block Grant, following the usual Committee hearing process would be given careful consideration by this Committee. In fact, many of us would support some of these changes, if taken up separately. By including these Medicaid and MCH Block Grant expansions in the Committee's budget reconciliation bill, they are not voted on based on their own merits. In addition, if the reconciliation bill it taken up on the Floor under a closed rule, which is quite often the case, no future opportunity to offer amendments is afforded Members.

The so-called Medicare "reforms" included in the Committee's package represent a set of choices between spending and savings measures to which we are unwilling to be a party. Following a year in which the Gramm-Rudman legislation reduced Medicare payments to hospitals and physicians by 1% and the enactment of the FY 1986 reconciliation legislation which found close to $3 billion in Medicare savings, any further reductions to providers should be carefully analyzed. Although we believe that program savings are achievable, these savings should not be found in order to expand the same program in other areas: such is the case in the Committee's Medicare and Medicaid Package. For example, we must question the fairness of reducing payments for services provided to renal dialysis patients, cataract patients and patients in need of oxygen therapy, in exchange for expanding coverage for occupational therapy and judicial review of Part B claims. This practice of cutting funds for one service in order to expand another cannot be considered responsible Congressional action.

Also, this Committee should not repeatedly rely on the Committee on Ways and Means to find the savings that both Committees were jointly instructed to achieve. The Medicare Part A program which provides reimbursement for hospital services has been subjected to significant reductions in payments over the past three years. Making further cuts in hospital reimbursement in order to expand outpatient services covered under Medicare Part B, only enhances the inequities to Medicare beneficiaries established by this Committee's bill.

We are very much aware of a rule in the Senate which prohibits the inclusion of extraneous materials in reconciliation legislation. Extraneous material can include provisions which increase outlays or decrease revenues or do not affect outlays and revenues if a Committee's bill or title of a bill fails to achieve the Committee's reconciliation instructions. In the Senate, a "point of order" may be raised against this extraneous material in a conference report as well as in a House amendment. Clearly, this Committee's health package could be subject to such a point of order.

The budget process is meaningless if the Committee on Energy and Commerce, or any other Committee in Congress, refuses to take seriously the instructions for reconciliation provided by the Resolution. Spending measures should be considered by the Committee in separate legislation, not tacked on to a savings measure, keeping the Committee from reaching its budget reduction targets.

The Medicare and Medicaid Amendments approved by this Committee on July 23, 1986 fall far short of the deficit reduction goal assigned to this Committee by S. Con. Res. 120. This package is an inappropriate budget reconciliation bill that could possibly subject the Conference Report or a House amendment to a point of order.

We believe this Committee has an obligation to the American people to make real contributions to cutting the deficit. Unfortunately, the bill our colleagues voted to report to the House is not a legitimate savings proposal, and we must voice our opposition.

Norman F. Lent.
Ed Madigan.
Carlos J. Moorhead.
Bill Dannemeyer.
Jack Fields.
Michael G. Oxley.
Howard C. Nielson.
Dan Schaefer.
Trent Lott.

TITLE V—COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

House of Representatives,
Committee on Interior and Insular Affairs,
Washington, DC, July 28, 1986.

Hon. William H. Gray III,
Chairman, Committee on the Budget,
Washington, DC.

Dear Mr. Chairman: The Committee on Interior and Insular Affairs is hereby reporting recommended changes in law pursuant to the reconciliation instructions contained in S. Con. Res. 120. The recommendations are contained in the attached resolution adopted by the Committee on July 23, 1986.

Sincerely,

Morris K. Udall, *Chairman.*

Attachment.

Resolution of the Committee on Interior and Insular Affairs

Whereas, S. Con. Res. 120 requires the Committee on Interior and Insular Affairs to report changes in laws within its jurisdiction: Therefore be it

Resolved That the Committee on Interior and Insular Affairs reports to the Committee on the Budget the following recommendation for inclusion in the Budget Reconciliation Act for fiscal year 1987:

"SEC. . NUCLEAR REGULATORY COMMISSION ANNUAL CHARGES.

"(a) In General.—

"(1) Beginning with fiscal year 1987, the Nuclear Regulatory Commission shall assess and collect an annual charge from each person described in paragraph (2) in an amount equal to $750 per million watts of the rated thermal capacity of the utilization facility operated by such person.

"(2) A person described in paragraph (1) is any person—

"(A) who, on the last day of a fiscal year, holds a license issued under section 103 or 104 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134 (b)) that authorizes the person to operate a utilization facility with a rated thermal capacity in excess of 50,000,000 watts; or

"(B) whose authority to operate under such a license is in suspension (but has not been revoked) on the last day of the fiscal year.

"(b) Exemption From Certain Charges.—Any person who is assessed an annual charge under this section shall be exempt from any assessment of charges under section 9701 of title 31, United States Code, other than charges for the costs incurred by the Commission in processing the application of such person for an operating license.

"(c) Use of Funds.—Amounts collected under this section shall be deposited in the general fund of the Treasury to reimburse the United States for amounts appropriated for use by the Nuclear Regulatory Commission in carrying out its functions.

"(d) REPEAL.—Title VII of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272) is amended by striking subtitle G.".

"SEC. . ABANDONED MINE RECLAMATION RESEARCH AND DEVELOPMENT.

"After the enactment of this Act, the research and demonstration authorities of the Department of the Interior under the provisions of section 401(c)(6) of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) shall be transferred to, and carried out by, the Director of the Bureau of Mines. Research and demonstration projects under such provision shall be selected by a panel appointed by the Director of the Bureau of Mines to be comprised of 9 persons including 4 representatives of State abandoned mine reclamation programs, 4 representatives of the Bureau of Mines and one representative of the Office of Surface Mining Reclamation and Enforcement.".

Approved this 23rd day of July, 1986.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 28, 1986.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for a resolution of the Committee on Interior and Insular Affairs for inclusion in the Budget Reconciliation Act for fiscal year 1987.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

C.G. NUCKOLS
(For Rudolph G. Penner).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Not yet assigned.
2. Bill title: Resolution of the Committee on Interior and Insular Affairs (for inclusion in the Budget Reconciliation Act for fiscal year 1987).
3. Bill status: Committee resolution adopted by the House Committee on Interior and Insular Affairs, July 23, 1986.
4. Bill purpose: The bill establishes annual charges for the Nuclear Regulatory Commission (NRC), which are to be assessed and collected by the commission beginning with fiscal year 1987. The bill also transfers the research and demonstration authorities for abandoned mine reclamation from the Department of the Interior's Office of Surface Mining to the Bureau of Mines.
5. Estimated cost to the Federal Government: The table below summarizes the bill's estimated impact on the federal budget, relative to both current law, and the budget resolution baseline, as adjusted for enacted legislation. The House Budget Committee has

specified that reconciliation savings are to be measured from the baseline used by the budget conferees, adjusted for subsequently enacted legislation.

[By fiscal years, in millions of dollars]

	1987	1988	1989	1990	1991
Estimated budget authority	−109	−103	−92	−92	−85
Estimated outlays	−109	−103	−92	−92	−85

The budget impact of this bill falls within budget function 270.

Basis of estimate: The bill would require the NRC to assess and collect annual charges from its licensees beginning with fiscal year 1987. The charges are to be assessed at the rate of $750 per million watts of the rated thermal capacity of nuclear powerplants operated by NRC licensees, and are applicable to any nuclear facility with a rated thermal capacity in excess of 50 million watts. For the purposes of this estimate, CBO assumes that the cumulative thermal capacity for which the mandated charges are applicable is approximately 320,000 million watts, resulting in total annual charges of approximately $240 million annually. Under current law, the NRC is required to assess and collect annual charges totaling 33 percent of annual Commission costs. CBO estimates that the difference between NRC charges to be collected under current law and charges to be collected under the proposed legislation is $109 million in fiscal year 1987, $103 million in fiscal year 1988, and $92 million in fiscal year 1989.

The transfer of abandoned mine reclamation research and development from the Office of Surface Mining to the Bureau of Mines is not expected to have a significant impact on the federal budget.

6. Estimated cost to State and local governments: The annual charges for nuclear power regulation mandated by this bill would affect electric utility rates, and thus indirectly increase the utility costs of state and local governments. This increase is not expected to be significant.

7. Estimate comparison: None.

8. Previous CBO estimate: On July 28, 1986, the Congressional Budget Office prepared a cost estimate for reconciliation provisions recommended by the Committee on Energy and Commerce. The Energy and Commerce Committee is also proposing to increase NRC fees, but would establish a different basis for the fees than would the Interior Committee. CBO estimated that the Energy Committee's proposal would result in additional receipts of $139 million in fiscal year 1987 and $751 million over the 1987-1991 period, relative to the budget resolution baseline.

9. Estimate prepared by: Pete Fontaine.

10. Estimate approved by: Robert A. Sunshine (for James L. Blum, Assistant Director for Budget Analysis).

TITLE VI—COMMITTEE ON MERCHANT MARINE AND FISHERIES

House of Representatives,
Committee on Merchant Marine and Fisheries,
Washington, DC, July 25, 1986.

Hon. William H. Gray III,
Chairman, Committee on the Budget,
Washington, DC.

Dear Mr. Chairman: In response to the reconciliation instructions imposed by S. Con. Res. 120, the Budget Resolution for FY87, the House Merchant Marine and Fisheries Committee has agreed on the recommendations included in the enclosed package.

Briefly, the components of the Merchant Marine and Fisheries package are: Ocean dumping application and special fees, Amendments to the Ship Mortgage Act of 1920, Amendment of the Merchant Ship Sales Act of 1946, Comprehensive Oil Pollution Liability and Compensation, Coast Guard Load Line and Tonnage Measurement fees, a "Buy America" provision for exploration and development activities on the U.S. Outer Continental Shelf, establishment of a National Offshore Safety Advisory Committee, Abolishment of the National Advisory Committee on Oceans and Atmosphere, an adjustment of the U.S. investment base in the Panama Canal on which interest payments to the treasury are computed, and provisions regarding the timetable for completion of Coast Guard offshore safety studies.

The Committee included the Oil Spill liability title despite concerns voiced regarding the possibility of receipts being credited to the Ways and Means Committee. This was done out of the reasoning that no other Committee, on either side of the Hill, has so nurtured this concept since its inception by this Committee ten years ago. To have another Committee given credit for the substantial receipts which will be generated by the legislation is intrinsically wrong. Upon review, I trust you will arrive at this same conclusion and credit it to our Committee when analyzing our compliance with the reconciliation instructions.

As House action on the entire reconciliation package nears, I look forward to Floor debate and passage, followed by a productive conference with the Senate where the issues included within my Committee's recommendations can be favorably resolved.

With warm personal regards, I am,

Sincerely,

Walter B. Jones, *Chairman.*

Enclosures.

Report To Accompany Recommendations From the Committee on Merchant Marine and Fisheries

COMMITTEE ACTION

On Thursday, July 24, 1986. The Merchant Marine and Fisheries Committee met to mark up its recommendations to the House Budget Committee in compliance with the reconciliation instructions contained in S. Con. Res. 120, the First Concurrent Resolution of the Budget, FY87.

The Committee took up for consideration a working paper containing the following elements: Ocean Dumping Application and Permit Fees, Foreign Fishing Permit Fees, Amendments to the Ship Mortgage Act of 1920, Coast Guard Direct User Fees, and Comprehensive Oil Pollution Liability and Compensation.

Mr. Breaux successfully offered an amendment to strike the Foreign Fishing Fees Title.

Mr. Fields offered an amendment to strike Coast Guard Direct Fees and insert a new title on the Panama Canal Investment. Mr. Jones successfully offered an amendment to the Fields amendment, severing the striking of the Coast Guard Fees from the issue of the Panama Canal Investment title. The Fields amendment on the Panama Canal Investment was then adopted.

Mr. Biaggi successfully offered his amendment to add a new title pertaining to the Ready Reserve Force.

Mr. Davis successfully offered an amendment to delete the Coast Guard Direct fees with the exception of the Load Line and tonnage Measurement fees as contained in House passed H.R. 1362.

Mr. Tauzin successfully offered his amendment to add a new title pertaining to the timetable for the Coast Guard's completion of studies on offshore safety.

Mr. Bosco successfully offered an amendment to add a new title to include a "Buy American" requirement for exploration and development on the U.S. Outer Continental Shelf.

Mr. Tauzin successfully offered an amendment to add a new title establishing a National Offshore Safety Advisory Committee.

Mr. Davis offered an amendment on behalf of Mr. Snyder relating to the Oil Pollution Liability title. The Committee rejected the amendment.

Mr. Jones successfully offered an amendment to add a new title to abolish the National Advisory Committee on Oceans and Atmosphere.

The package, as amended, was reported to the House Budget Committee.

Subtitle A. Ocean Dumping Application and Special Fees

Subtitle A establishes a mandatory ocean dumping application fee and a special fee regime under Title I of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, commonly referred to as the Ocean Dumping Act. This ocean dumping fee system has already been considered and approved by the House earlier in the 99th Congress.

On May 15, 1985, the Committee on Merchant Marine and Fisheries reported H.R. 1957, the "Ocean Dumping Amendments Act of 1985". (Report 99-107, Part 1). Included in the bill was an amendment to section 104(b) of the MPRSA which would establish an ocean dumping application and special fee process.

After further consideration by the Committee on Public Works and Transportation (Report 99-107, Part 2), which did not include any changes to the application or special fee provisons, the bill was considered and passed by the House on December 10, 1985. The bill that passed the House contained a number of changes to the versions reported by the Committees, including modifications to the application and special fee provisions. The Committee on Merchant Marine and Fisheries has included, in its reconciliation report, the amendment to section 104(b) of the MPRSA as contained in the House-passed bill.

Paragraph (1) of new section 104(b) requires the collection of an application fee. These fees are intended to recoup the reasonable administrative costs incurred by the Administrator of the Environmental Protection Agency (EPA) or the Secretary of the Army (through the Corps of Engineers) in processing permits under sections 102 or 103 of Title I of the MPRSA.

By the term "reasonable administrative costs," the Committee intends to include the costs incurred directly by the agencies in reviewing and processing applications for permits, including the costs of any public hearings required by the applications. Reasonable administrative costs are not to include the costs of defending administrative decisions in the event of a judicial challenge. Nor is the application fee intended to recoup general program costs associated with developing and promulgating program regulations or conducting technical or scientific research relating generally to the ocean dumping programs of either EPA or the Corps of Engineers. In no event is the application fee to exceed $10,000.

Paragraph (2) requires the collection of a special fee applicable to section 102 permittees. The provision requires EPA to prescribe, after a hearing on the record, a special fee that is intended to recoup the costs of monitoring to determine compliance with the terms of the permit, and the costs of only the monitoring necessary to make reasonable assessments of the direct effects on the marine environment caused by the disposal activities carried out under a permit. The fee, however, must not have a substantial adverse effect on the competitive prospects for commercial implementation of effective and efficient ocean-based waste destruction technologies that otherwise satisfy the requirements of law.

Paragraph (3) provides that the funds collected by the application and special fee provisions shall be deposited as miscellaneous receipts in the general fund of the Treasury. This is the only change to the House-passed application and special fee language in H.R. 1957 which had provided that the fees were to be deposited to the principal appropriations accounts used to carry out processing, monitoring, surveillance, and enforcement activities. That language was deleted and replaced with the requirement that the fees be deposited into the Treasury.

Subtitle B. Amendment of the Merchant Ship Sales Act of 1946

Subtitle B is drawn from the Maritime Administration's proposed codification of title 46, United States Code, which was transmitted to Congress in August 1985. The Committee adopted this recommendation to state more clearly the authority of the Secretary of Transportation over the National Defense Reserve Fleet. The amendment clarifies any question as to whether the Ready Reserve component of the National Defense Reserve Fleet is the responsibility, with the cooperation of the Department of Defense, of the Secretary of Transportation.

Subtitle C. Amendments to the Ship Mortgage Act of 1920

Subtitle C amends the Ship Mortgage Act of 1920. The Ship Mortgage Act was designed in 1920 to encourage investment in shipping by commercial parties, and to secure lenders, who, up to that date, could not prosecute a claim on a mortgage in Admiralty against maritime liens. Fashioning the law similarly to mortgage liens on realty, the Congress perfected the process by making the action one that sounds in Admiralty, and is *in rem*. The amendment makes clear that the United States, when a mortgagee, may assert its claim, and recover the secured vessel regardless of whether any other proceeding, including a stay under the Bankruptcy Act, has commenced. The amendment does not affect any claimants other than the United States. The circumstances under which the United States would assert its claim under the Ship Mortgage Act are limited to those in which the Maritime Administration, following default by the mortgagor to the commercial lender, has paid off on the Title XI (Merchant Marine Act, 1936) bonds guaranteed by the United States, and where the asset which is the subject of the lien cannot be secured because the debtor has sought the protection of the courts under other law(s). The amendment is intended to reassert the Congressionally mandated primacy of admiralty jurisdiction over maritime matters as such jurisdiction is provided for in the Constitution, Article III, Section 2. The clarification of the Ship Mortgage Act will permit the Maritime Administration to recover the asset, sell or operate the recovered vessel, in the public interest, and make unnecessary the continued payment of interest on Treasury borrowings.

Subtitle D. Direct Coast Guard Fees for Load Line and Tonnage Measurement

Subtitle D contains the text of H.R. 1362, a bill to revise, consolidate, and enact certain laws related to load lines and measurement of vessels as parts C and J of title 46, United States Code, as that legislation was passed by the House on December 2, 1985. The Committee believes the explanation of the legislation in House Report 99-398 clearly details the intent of this Committee in making these changes to law. Three minor changes have been made: sections 5107(d) and 14103(d) have been changed to make the revocation authority of the Secretary the same as is contained in current Memoranda of Understanding between the Secretary and those delegated authority; and changes were made to the user fee section to clarify the accounting and make the section consistent with the general user fee authority in title 31 of the United States Code. This legislation is being added to this legislation because it will allow the Coast Guard to raise nearly $2 million in user fees charged to entities and individuals who have their vessels measured and load lines determined.

Subtitle E. Adjustment of the U.S. Investment Base in the Panama Canal on Which Interest Payments to the U.S. Treasury Are Computed

The Committee also incorporated within its reconciliation package an amendment offered by the Ranking Minority Member of the Panama Canal/OCS Subcommittee, Congressman Jack Fields (R.-TX).

This amendment consisted of the language of H.R. 4016, a bill which amended the Panama Canal Act of 1979 (22 U.S.C. 3793(b)) by increasing the base amount of the United States investment in the Panama Canal.

The Panama Canal Act, Public Law 96-70, as written by the Merchant Marine and Fisheries Committee in 1979, included a provision that established a special accounting procedure to calculate the interest on the U.S. investment in the Canal (Section 1603(b)). A portion of the revenues of the Panama Canal Commission (PCC) were deposited in the PCC Fund to provide these interest payments to the U.S. A problem ensued from the procedure because, under Section 1603 of the Act, the investment base was decreased by the revenues deposited in the PCC Fund. To stop this erosion of the U.S. investment base, Congressman Jack Fields (R.-TX) introduced legislation in 1985 (H.R. 664) which changed the procedures used to calculate interest on the investment base, thereby correcting this anomaly of having interest payment revenues deposited in the PCC Fund actually reducing the principal.

In 1986, Congressman Fields introduced H.R. 4016, which again amended the Panama Canal Act of 1979 (22 U.S.C. 3793(b)) by increasing the investment base of the U.S. by the amount of the interest that was deposited in the PCC Fund before December 31, 1985, and which served to reduce the principal of the U.S. investment in the Canal. Basically, the bill recoups the decrease made to the investment base under the old system of accounting before H.R. 664 (P.L. 99-195) was enacted.

CBO estimates that under H.R. 4016, the present investment base of $175.1 million would be increased by $62 million, resulting in an investment principal of $137.1 million. Using a nine percent interest rate in 1987, CBO figures a savings to the U.S. Treasury of $9 million in 1987, due to the increased receipts representing higher interest payments to the U.S. in 1986 and 1987. Each year thereafter the savings are less based on a lower interest rate than nine percent (CBO report attached). The savings calculated by CBO assumes that there will be a $9.4 million profit payment to Panama in 1987 and the increased interest payments will be taken out of the profit payment to Panama.

While the Committee has no desire to damage our long-standing relationship with the Republic of Panama, there is no debate or controversy among the Members of the Merchant Marine and Fisheries Committee over the fact that these interest payments on the United States investment in the Canal are properly paid to the Treasury.

The Committee notes that Congress has sent legislation to the President to exempt the Panama Canal Commission from the enforcement provisions of the Gramm-Rudman-Hollings law, which would have reduced the operational budget by $18.3 million, that the PCC has received $17.1 million in fiscal 1986 supplemental appropriations, that any operating surplus or profit at the end of fiscal 1986 will be paid to the Republic of Panama (at the end of June the Commission has a "profit" of $11.8 million, partly as a result of deferring maintenance because of Gramm-Rudman-Hollings; this "profit" is expected to decline substantially by the end of the fiscal year), and that it continues to utilize $85 million in U.S. taxpayer funds which were appropriated to that agency in 1979.

Subtitle F. Comprehensive Oil Pollution Liability and Compensation

This subtitle provides for the establishment of a comprehensive system of liability and compensation for responding to oil pollution incidents.

The purpose of the subtitle is to provide a prompt and equitable mechanism for compensating those suffering economic loss as the result of an oil spill. Potential claimants include Federal, state, and local governments, as well as private parties such as commercial fishermen or beachfront property owners who might suffer damage to private property or loss of income as the result of an oil spill. The provisions of the legislation extend to all vessels, and to facilities associated with oil production from the Outer Continental Shelf. The bill does not cover pollution from onshore oil storage terminals or from oil drilling facilities located in state waters.

The subtitle would hold those involved in the production and transportation of oil strictly liable for the damages resulting from a pollution incident up to certain limits specified in the law. These limits are substantially higher than those imposed under domestic statutes such as the Federal Water Pollution Control Act, and are roughly equivalent, with respect to ocean-going vessels, to global standards approved by the International Maritime Organization (IMO). No limit on liability is allowed in the event of gross negligence or willful misconduct by the party responsible for a vessel or facility that is the source of an oil spill.

The person responsible for a vessel or facility that handles oil is required to establish financial responsiblility equal to the upper limit of his potential liability as specified in the bill. This provides a guarantee that a damaged party will be able to recovery from the polluter.

The subtitle spells out the damages for which recovery may be sought, including cleanup costs, damage to natural resources, damage to private property, loss of income, and loss of subsistence use of natural resources. This list of damages is more extensive than that contained in the Federal Water Pollution Control Act, and more specific, as well as more extensive, than most comparable state laws.

In addition to establishing a legal regime governing the liability of those responsible for oil pollution, the subtitle would establish a backup fund to be available to guarantee compensation to injured parties. This fund would be financed by a 1.3 cent a barrel tax on oil (about 1/14th of a penny per gallon) and is expected to reach a maximum of approximately $200–$300 million by the end of the four-year period during which the tax is imposed (October 1, 1986–September 30, 1990). The Fund would be available to pay Federal or state oil spill cleanup costs on an immediate basis, and would also be available to compensate claimants if:

the responsible party and the claimant have failed to agree on a settlement within six months of the filing of a claim;

the liability limit of the responsible party has been reached;

the source of the spill is unknown;

if the responsible party has a valid defense against liability; or

if the source of the spill is a foreign offshore oil unit.

The Fund would not be available to compensate governments for damage to natural resources resulting from an oil spill, although the polluter would remain liable for such costs.

The subtitle would preempt state pollution liability laws to the extent, and only to the extent, that they duplicate the provisions of the proposed Federal law. Thus, the Federal law would govern and provide the exclusive remedy for cliamants where a spill occurred from a vessel or an OCS production platform, but not from an onshore oil storage terminal or from a tank truck. However, the subtitle would preserve, without restriction, the right of state governments to finance and maintain their own oil pollution compensation funds.

Finally, the bill provides language to implement two International Conventions dealing with oil pollution liability and compensation. This language would become effective only upon the ratification of the two Convention Protocols by the United States. The Protocols have been submitted for ratification by the State Department, but have not yet been acted upon by the Senate.

In summary, the oil pollution subtitle would improve upon present law in the following eight respects:

(1) It will guarantee that those suffering economic loss as the result of an oil spill from a vessel or offshore facility will be quickly and fairly compensated for the loss, whether or not the spiller accepts liability or admits negligence in connection with the discharge of oil;

(2) It will impose a concept of strict liability on those producing or transporting oil in order to encourage a high standard of care in oil-related operations and make certain that those responsible for pollution will be held primarily responsible for the cost;

(3) It will encourage prompt and complete cleanup of oil spills from vessels or offshore facilities, including relatively chronic pollution, such as that caused by tar balls;

(4) It will reduce the cost to the taxpayer of cleaning up oil spills by creating an industry-financed fund to be available to reimburse the government for cleanup activities not otherwise compensated;

(5) It will simplify and reduce Federal administrative costs by eliminating four single-purpose oil pollution liability funds presently in existence and replacing them with a single fund liable for all costs of administering this legislation;

(6) It will establish a clear and predictable legal and regulatory framework within which actual or potential claimants,

spillers, and insurers will be able to make decisions relevant to oil pollution matters;

(7) It will encourage efforts to improve international standards of oil pollution liability and compensation; and

(8) It will eliminate certain provisions of the Outer Continental Shelf Lands Act Amendments of 1978 which distort traditional methods of allocating pollution liability within the offshore oil production industry.

A more detailed description of oil pollution liability and compensation legislation is contained in House Report 99-253, Part 4, a report submitted by the House Committee on Merchant Marine and Fisheries to accompany H.R. 2817, the Superfund Amendments (a bill later redesignated H.R. 2005). The subtitle described herein differs significantly from H.R. 2817 in certain specific respects including the following:

The subtitle adopts language drafted by the House Committee on Ways and Means with respect to the imposition of the tax on oil and the establishment of the Oil Pollution Trust Fund within the Treasury. H.R. 2817, as reported by the Committee on Merchant Marine and Fisheries, would have established a wholly-owned government corporation with an account financed by a premium on oil. The language drafted by the Committee on Ways and Means was included as Part III of Title V of H.R. 2005, the Superfund Amendments of 1986, when the legislation was approved by the House of Representatives in December, 1985. This language also differs from H.R. 2817 by prohibiting expenditures from the Trust Fund to compensate governments for damage to natural resources.

The subtitle includes language that will permit United States claimants to seek compensation from the Oil Pollution Trust Fund for an economic loss suffered as a result of oil pollution emanating from an offshore oil drilling or production unit located in foreign waters. Thus, a claimant suffering loss as a result of a spill from a Canadian or Mexican offshore drilling unit would be able to obtain compensation under the bill. This change was prompted by concern that a spill similar to the 1979 Ixtoc spill in the Gulf of Mexico could occur, but would otherwise not be covered by this legislation.

The subtitle also includes language that would permit claimants to recover damages from the Trust Fund in the event of a catastrophic spill that exceeds both the limit on liability of the responsible party and the limit on liability of the international fund. This provision would only be applicable in the event that the United States became a party to the international oil pollution Protocols.

Finally, the subtitle would preserve, without restriction, the right of state governments to maintain their own oil pollution compensation funds. In earlier versions approved by the Merchant Marine and Fisheries Committee, including H.R. 2817, the right to tax oil for purposes identical to those contained in the proposed Federal law was only preserved with respect to states that currently had such a tax, and then only for a period of three and one-half years.

Subtitle G. Establishment of a National Offshore Vessel Operators Safety Advisory Committee

This subtitle establishes a National Offshore Vessel Operators Safety Advisory Committee. The Advisory Committee will report to the Secretary of Transportation for the purpose of advising the Coast Guard on matters related to Coast Guard responsibilities for the safety of oil, gas, and other mineral exploration and development activities on the Outer Continental Shelf.

Often regulations are highly technical or complicated and have an effect beyond the operation of a vessel or MODU. For example, under the liability section of the comprehensive oil pollution liability and compensation legislation, the intentional violation of a safety regulation by a responsible party may be judged to constitute willful or gross negligence and in effect be a bar to the limitation of liability provisions of this subtitle. Therefore, it is important that all interests in offshore oil and gas development be given an opportunity to express their views on these safety regulations. This Advisory Committee will be composed of 15 individuals having particular expertise in offshore activities representing industry, workers, environmentalists, and the general public. The Coast Guard will be represented at the Advisory Committee meetings, and any other interested agency may send a representative to the meetings. The Advisory Committee will report to the Secretary of Transportation and the Department of Transportation will be responsible for providing administrative support.

The Committee on Merchant Marine and Fisheries expects that this Advisory Committee will operate fully in accordance with the Federal Advisory Committee Act (5 App. U.S.C.). Further, this section provides for the same type of administrative and fiscal provisions that apply to other similar Coast Guard advisory committees. In particular, it authorizes the Advisory Committee to make available to Congress the information, advice, and recommendations which it is authorized to give to the Executive Branch. In addition, the purpose of the Advisory Committee is to encourage the departments and agencies to consult with it before taking any significant action related to the safety of offshore operations whenever practicable; but this requirement does not apply to an adjudicatory or enforcement matter within the Advisory Committee's scope of interest. The phase "whenever practicable" is intended to give the Coast Guard flexibility in dealing with the Committee, i.e., the Coast Guard need not be severely restricted by the schedule of the Committee's meetings. This consultation requirement placed upon the departments and agencies is intended to supplement, but not conflict with, the requirements of the Administrative Procedures Act. The intent is clearly not to authorize ex parte contacts which would be violative of due process and fundamental fairness in rulemaking proceedings, but to increase participation in agency rulemaking by providing an early and meaningful opportunity to discuss these significant actions directly affecting offshore activities regulated by the Coast Guard.

The Committee is scheduled to terminate on September 30, 1992, unless extended by law.

Subtitle H. Repeal of the Act Establishing the National Advisory Committee on Oceans and Atmosphere

NACOA was established as a Presidential and Congressional advisory body. In the view of the Committee on Merchant Marine and Fisheries, this vital function is not currently being adequately served. This Committee believes that the major deficiencies of NACOA are due to the unsatisfactory process for appointment of members, its apparent lack of structural and budgetary independence, and inadequate financial support.

Although NACOA is both a Presidential and Congressional advisory body, all 18 members are appointed by the President with no input from the Congress. Over the years, the lack of sufficiently broad representation on NACOA has escalated Congressional concern over the appointment process. This concern was reinforced when the President attempted, unsuccessfully, to nominate as Chairman a person who subsequently described NACOA as a "Nothing Burger."

The operational and administrative charter of NACOA is reviewed and approved by the NOAA Administrator. The relationship between NACOA and NOAA has caused doubt as to whether the Committee has the structural and budgetary independence necessary to allow it to function as a truly independent entity.

Finally, NACOA has not had the support of the Administration, and for the last four years, the President's budget has proposed to terminate funding for NACOA.

Congressional support for NACOA has been diminishing with ever increasing budgetary pressures and a continuing concern over the selection of Committee members. This Committee has acted on those concerns on several occassions. On the recommendation of this Committee, the House twice attempted to rectify this situation in the 98th Congress through passage of legislation to create a new National Ocean Policy Committee (a "Stratton II" Committee).

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In reporting this legislation, the Committee wishes to make clear that its dissatisfaction is with the structure of NACOA. It is not intended to reflect negatively on the service of any current or past members or staff of NACOA. To the contrary, over the years, many Members of NACOA have earned the respect and confidence of the Congress, the Administration, and the scientific community under the leadership of John Knauss, Dean of the Graduate School of Oceanography at the University of Rhode Island. In the last two years, John Flipse, Associate Dean at Texas A&M University, has done a commendable job despite the difficult obstacles presented by the Administration's proposal to repeal NACOA. It is the unfortunate duty of this Committee to acknowledge that NACOA can no longer fulfill its responsibilities.

Nonetheless, this Committee remains steadfastly committed to the value of, and need for, a forward looking, independent advisory body. Growing U.S. responsibilities in the Exclusive Economic Zone, the need for a clear and comprehensive ocean policy, and current budgetary limitations emphasize the compelling nature of this need. The existing structure of NACOA does not adequately address this need. However, the Committee believes that an effective advisory body can be established and will continue efforts to develop legislation to create such a body.

Subtitle I. Establishment of a Timetable for Completion of Coast Guard Offshore Safety Studies

The amendment was adopted because the Committee is concerned that the Coast Guard is not adequately considering the need for standby vessels for evacuation at manned facilities for oil and gas exploration, development and production, on the Outer Continental Shelf (OCS), as part of their development of regulations pursuant to the Advance Notice of Proposed Rulemaking (50 Fed. Reg. 9290 (1985)), published March 7, 1985. The Committee is also concerned about possible delays in the issuance of final regulations by the Coast Guard.

It is the intention of the Committee that the Coast Guard consider requiring standby vessels at all manned facilities for oil and gas exploration, development and production, on the Outer Continental Shelf (OCS) during the rulemaking process. While this language does not mandate or require the use of a standby vessel, the Committee remains deeply concerned about offshore safety and wants the Coast Guard to recognize that the use of a standby vessel must be contemplated in their decision making process. It is also the intention of the Committee that the Coast Guard's final rules will be effective prior to September 1, 1987. The Committee also does not intend the reports mandated under section 2 to, in any way, delay issuance of final regulations.

The Subcommittee on Panama Canal/Outer Continental Shelf has considered requirements for standby vessels in both the 98th and 99th Congress. The Subcommittee held a hearing on H.R. 1748, the Offshore Installation Emergency Act, on November 12, 1985. The Subcommittee reported out H.R. 1748, with amendments, on February 6, 1986. H.R. 1748, as reported, required final regulations to be promulgated within 120 days of enactment, which would require standby vessels to be within 6 nautical miles of each manned installation, excluding Alaska, on the OCS. Requirements of H.R. 1748 would expire upon issuance of final regulations by the Coast Guard pursuant to the advance notice of proposed rulemaking (50 Fed. Reg. 9290 (1985)), published March 7, 1985.

This amendment, adopted as part of the reconciliation package, requires the Coast Guard to issue final regulations prior to September 1, 1987, pursuant to the Advance Notice of Proposed Rulemaking (50 Fed. Reg. 9290 (1985)), published March 7, 1985. It also requires the Coast Guard to consider, in the rulemaking process, requiring standby vessels for evacuation of personnel from manned installations on the OCS. In addition, the amendment requires the Secretary to submit a progress report on the status of the rulemaking process prior to December 31, 1986 and a report prior to September 1, 1987, setting forth the justification for evacuation procedures contained in the final regulations.

Subtitle J. Requirement for the Use of American Built Rigs for Exploration and Development on the U.S. outer Continental Shelf

Subtitle J., offered as an amendment by Mr. Bosco, was motivated by a growing concern about the number of structures and vessels being built overseas for the U.S. outer Continental Shelf (OCS) oil and gas market. Japanese and Korean yards have received the contracts to build the last nine platforms ordered for U.S. west coast operations. Foreign-built launch barges have been used to transport platforms from U.S. ports to the OCS. In addition, foreign-built warehouse ships and supply vessels have been used to support exploratory drilling operations in the Navarin Basin.

This subtitle adds a new subsection (j) to section 5 of the OCS Lands Act (43 U.S.C. 1334). Paragraph 1 of the subsection requires any structure that is used on the OCS to be built in the United States. One-half (by cost) of the supplies, materials, or articles used in the building of the structure must be of U.S. origin. This paragraph applies to all platforms, rigs, warehouse vessels, and supply ships used for the purpose of exploration or production of oil and gas on the OCS.

Paragraph 2 "grandfathers" in any of the structures or vessels referred to in paragraph 1 that were built, were under construction, or for which a building contract had been executed, on or before October 1, 1986. Foreign-built structures or vessels may be used on the OCS if they meet one of these requirements.

Paragraph 3(A) allows a waiver of the 50% U.S.-origin supply requirement if the Secretary of the Interior determines that one-half of the supplies necessary for the construction of the OCS structure cannot be mined, produced, or manufactured in the United States.

Paragraph 3(B) allows the Secretary of the Interior to waive the requirment that all OCS structures or vessels on a specific lease be U.S.-built if, upon application, it is determined that at least onehalf will be U.S.-built, by number and by weight.

Subtitle applies only to the OCS south of the 49th parallel. In effect, the subtitle does not apply to any of the Alaskan OCS planning areas.

DISSENTING VIEWS ON BUDGET RECONCILIATION

I am very disappointed that the Committee did not adopt Coast Guard user fees as part of its reconciliation responsibilities. I am concerned that the Committee fell $50 million short of our target for three years and I am very concerned that the Committee does not fully comply with our target of $50 million for FY 1987. I am also concerned that some of the proposed savings that we have adopted, may in fact, be lower than we anticipate.

I believe that the Committee should have adopted at least some Coast Guard user fees. I was very disappointed when only four other members, besides myself, voted against the amendment to strike $11 million in direct user fees from the package. I am concerned that the deficit will be much higher than anticipated and a sequestration order for FY 1987 could result in serious reductions of the Coast Guard's budget.

Because the vote to eliminate Coast Guard user fees was so overwhelmingly against user fees, I did not offer the amendment I was prepared to offer. I believe that my amendment carefully balanced a number of considerations which are necessary to establish an effective Coast Guard user fee system. In addition, it would not have caused any hardship. My amendment would have raised $100 million over the next two years in Coast Guard User Fees and would have met our target for three years.

First, this proposal would have required the Coast Guard to promulgate regulations, not later than October 1, 1988, which would have raised not more than $25 million in direct user fees from services such as regatta permits and patrols, documentation of vessels, admeasurement of vessels, inspection of vessels, licensing of personnel, and terminal inspections. In the interim, the Coast Guard would have been authorized to charge and collect the direct fees which would have been specified in the report to accompany the legislation. The interim fees would have been effective on October 1, 1986.

In addition, the Coast Guard would have been authorized to collect a fee of $12 every two years for each fishing vessel and recreational vessel that uses waters under the jurisdiction of the U.S. Coast Guard. This fee would have also been effective on October 1, 1986. To implement this provision, the Coast Guard would have required each owner or operator of a fishing or recreational vessel to puchase a sticker at the Post Office for $12 and affix the sticker to their vessel. This portion of the package would have raised an average of $25 million per year in indirect fees.

The combined package of direct and indirect user fees that were contained in my amendment would have met the Committee's target of $50 million per year for three years. These fees would have also met the Coast Guard's criteria for any user fee system which include the following: equity; administrative simplicity; effiency; and political acceptability. I will be discussing with other Members, who are also concerned about the eventual need for Coast Guard user fees, the possible alternatives which may be considered later during the reconciliation process.

MIKE LOWRY.

DISSENTING VIEWS OF HON. MIKE LOWRY, CHAIRMAN, SUBCOMMITTEE ON PANAMA CANAL/OCS

The Panama Canal Commission (PCC) is required to pay to the United States, interest on the U.S. Investment in the Panama Canal. H.R. 4016, the text of which, was added to this reconciliation package, increases the investment base of the United States in the Panama Canal, thereby increasing the interest payment to the United States. The assumptions underlying this legislation are that the higher interest payments will be derived from the profit payment to Panama required by the Panama Canal Treaty of 1977; or, they will come out of the operations and maintenance budget of the PCC which is presently carrying a surplus. I opposed H.R. 4016 because of my disagreement with those underlying assumptions.

First, there is no guarantee that there will be a profit payment to Panama in FY 1987. Because of the Gramm-Rudman sequestration order in FY 1986, the PCC was not allowed to spend approximately $18.3 million that had been appropriated in 1986. Because the treaty requires funds which are not spent, or "profits" to go to the Republic of Panama, these sequestered funds would have been paid to Panama. However, the FY 1987 authorization bill for the PCC, H.R. 4409, exempted the Commission from the Gramm-Rudman sequestration order. H.R. 4409 was passed by both Houses and is currently before the President for signature. The bill is expected to be signed soon, and at that time, the PCC will begin to spend the $18.3 million. The PCC has assured me that the pending supply orders, contracts, and the withheld expenses will be immediately obligated, leaving less than $3 million at the end of the fiscal year for the payment to Panama. Therefore, the assumption that the $9 million interest payment in FY 1987 will be covered by the profit payment made in FY 1987 to Panama is incorrect, because according to the PCC, because there will not be a profit payment of more than $3 million to Panama in FY 1987. In fact, since 1979 only $5 million over a five-year period has been given to Panama as a profit payment under the Treaty.

The second assumption is that there is enough money in the operations and maintenance account of the PCC to pay this additional interest of $9 million, and approximately $5 million each year thereafter. By law (PL 96-70), the tolls and fees must be calculated to produce enough revenues to cover all maintenance and operating expenses of the Panama Canal (section 1602(b)). The present toll rate has been set to comply with the law and cover as nearly as practicable all cost of maintaining the Panama Canal. This additional $9 million expense will ultimately raise the toll rates, or the PCC will be forced to reduce their maintenance programs. Having discussed these options with representatives of the PCC, it is clear to me that the PCC will not jeopardize the operations and maintenance of the canal, and will therefore be reluctantly forced to raise tolls.

Finally, I regard the Republic of Panama as one of our best friends in the Western Hemisphere and worthy of our respect and mutal consideration. To try to solve our budget deficit problems in the United States by grabbing at a meager annual profit payment to Panama, as required by the Panama Canal Treaty of 1977, is not good foreign policy, and in my opinion, is plainly not right. The revenues from the operations and maintenance of on the Panama Canal are not taxpayers' funds; they are paid by the users of the Canal for the maintenance and operation of the Canal, and any surplus funds go to Panama by the terms of the Treaty. We are violating the intent and spirit of the Treaty by trying to use these non-taxpayer funds to solve our deficit problems. I hope this is not a precendent which will be followed by the Republic of Panama when the responsibility for the operation and maintenance of the canal is completely transferred to the Republic of Panama in the year 2000.

MIKE LOWRY.

ADDITIONAL VIEWS

STATEMENT BY HON. CLAUDINE SCHNEIDER TO BE INCLUDED IN MERCHANT MARINE AND FISHERIES COMMITTEE REPORT ON FISCAL YEAR 1987 BUDGET RECONCILIATION

An amendment deauthorizing the National Advisory Committee on Oceans and Atmosphere (NACOA) was passed as part of today's reconciliation package. The original concept of an advisory committee on oceans and atmosphere was developed in 1969 by the highly respected Commission on Marine Science, Engineering and Resources—Stratton Commission. The Commission recommended formation of an advisory body to examine marine science affairs and to develop a national ocean strategy, leading to the passage of legislation enacting NACOA August 16, 1971. The NACOA Act of 1977 mandated that the committee review national coastal and ocean policy programs, and oversee the programs of the National Oceanic and Atmospheric Administration (NOAA).

In past years, under the skillful leadership of John Knauss, dean of the Graduate School of Oceanography at the University of Rhode Island, NACOA earned the respect and confidence of the Congress, the administration, and the scientific community. I also strongly praise the hard work and dedication of the past and present NACOA staff.

Unfortunately, NACOA's recent attempts to carry out its assigned functions have been severely hampered by both internal and external factors. The administration's budget has proposed the termination of NACOA for the past 4 years. A balanced representation of membership is currently lacking on the committee, with marine and atmospheric sciences severely under-represented. With NACOA being highly dependent upon NOAA for administrative and other support, it is also questionable whether the committee can properly fulfill its oversight role with respect to NOAA. For these economic and policy reasons, and the continuing need for a strong independent advisory body on ocean policy, I support Chairman Jones in this measure and the accompanying attempt to pass legislation to create a National Ocean Policy Commission. With the anticipated introduction of a Senate bill by Sen. Weicker on July 29, 1986, also calling for the establishment of an independent Policy Commission, I am hopeful that we will soon have a viable oceanic and atmospheric advisory body leading to a comprehensive national ocean policy.

CLAUDINE SCHNEIDER.

CHANGES IN EXISTING LAW

In compliance with clause 3 of the rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CHAPTER 27—OCEAN DUMPING

Sec.
1401. Congressional finding, policy, and declaration of purpose.
1402. Definitions.

Subchapter I—Regulation

1411. Prohibited acts.
1412. Dumping permit program.
1412a. Dumping of sewage sludge and industrial waste.
1413. Dumping permit program for dredged material.
1414. Permit conditions.

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33 U.S.C. 1414

§ 1414. Permit conditions

DESIGNATED AND INCLUDED CONDITIONS

* * * * * * *

PERMIT PROCESSING FEES; REPORTING REQUIREMENTS

[(b) The Administrator or the Secretary, as the case may be, may prescribe such processing fees for permits and such reporting requirements for actions taken pursuant to permits issued by him under this subchapter as he deems appropriate.]

(b)(1) The Administrator or the Secretary, as the case may be, shall prescribe by regulation and collect from the applicant, unless the applicant is a Federal agency, an application fee in an amount, not to exceed $10,000, that is commensurate with the reasonable administrative costs incurred or expected to be incurred by the Administrator or Secretary in processing the permit.

(2) The Administrator shall prescribe by regulation, after opportunity for a hearing on the record, and collect a special fee for permits issued under section 102 to recover the costs incurred, or expected to be incurred, in the undertaking of measures by Federal agencies to determine compliance with permit terms, and the undertaking of only the monitoring necessary to make a reasonable assessment of the direct effects on the marine environment caused by disposal activities carried out under the permit. Such fee shall be an amount which will not have a substantial adverse effect on the competitive prospects for commercial implementation of effective and efficient ocean-based waste destruction technologies that otherwise meet the requirements of law.

(3) The funds collected under paragraphs (1) and (2) shall be deposited as miscellaneous receipts into the general fund of the Treasury.

* * * * * * *

MERCHANT MARINE SALES ACT OF 1946

95 Stat. 167 (50 App. U.S.C. 1744)

[SEC. 11. (a) The Secretary of Transportation shall place in a national defense reserve (1) such vessels owned by the Department of Transportation as, after consultation with the Secretary of War and the Secretary of the Navy, he deems should be retained for the national defense, and (2) all vessels owned by the Department of Transportation on June 30, 1950, for the sale of which a contract has not been made by that time, except those determined by the Secretary of Transportation to be of insufficient value for commercial and national defense purposes to warrant their maintenance and preservation, and except those vessels, the contracts for the construction of which are made after September 2, 1945, under the provisions of the Merchant Marine Act, 1936, as amended. A vessel under charter on June 30, 1950, shall not be placed in the reserve until the termination of such charter. Unless otherwise provided for by law, all vessels placed in such reserve shall be preserved and maintained by the Secretary of Transportation for the purpose of national defense. A vessel placed in such reserve shall in no case be used for any purpose whatsoever except that any such vessel may be used for account of any agency or department of the United States during any period in which vessels may be requisitioned under section 902 of the Merchant Marine Act, 1936, as amended, and that any such vessel may be used under a bare-boat charter entered into pursuant to authority vested in the Secretary of Transportation on July 1, 1950, or granted to the Secretary of Transportation after such date.

[(b) Any war-built vessel may be made available by the Secretary of Transportation to any State maintaining a marine school or nautical branch in accordance with the Act of July 29, 1941 (Public Law 191, Seventy-seventh Congress; 55 Stat. 607).]

SEC. 11. (a) The Secretary of Transportation shall maintain a National Defense Reserve Fleet (including the Ready Reserve Force or any component of that fleet) consisting of those vessels owned or acquired that the Secretary, after consultation with the Secretary of the Navy, determines are of value for national defense purposes and that the Secretary of Transportation decides to place and maintain in the National Defense Reserve Fleet.

(b) Except as otherwise provided by law, a vessel in the National Defense Reserve Fleet may be used only for an account of an agency of the United States Government during a national emergency, proclaimed by the President, under a charter, contract, or other agreement arranged by the Secretary of Transportation.

MERCHANT MARINE ACT, 1920

41 Stat. 988 (46 App. U.S.C. 861 et seq.)

SECTION 30, SUBSECTIONS D, L (41 STAT. 1000, 1004) 46 APP. U.S.C. 922, 952

SUBSECTION D (46 APP. U.S.C. 922)

Subsection D. (a) A valid mortgage which at the time it is made, includes the whole of any vessel of the United States (other than a towboat, barge, scow, lighter, car float, canal boat, or tank vessel, of less than twenty-five gross tons) [3] shall, in addition, have, in respect to such vessel and as of the date of the compliance with all the provisions of this subsection, the preferred status given by the provisions of subsection M, if—

(1) The mortgage is endorsed upon the vessel's documents in accordance with the provisions of this section;

(2) The mortgage is recorded as provided in subsection C, together with the time and date when the mortgage is so endorsed;

(3) An affidavit is filed with the record of such mortage to the effect that the mortgage is made in good faith and without any design to hinder, delay or defraud any existing or future creditor of the mortgagor or any lienor of the mortgaged vessel;

(4) The mortgage does not stipulate that the mortgagee waives the preferred status thereof; and

(5) The mortgagee is *the United States* a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory, or possession of the United States, or a citizen of the United States, and for the purposes of this Act the Reconstruction Finance Corporation shall, in addition to those designated in sections 37 and 38 of this Act, be deemed a citizen of the United States.

(b) Any mortgage which complies in respect to any vessel with the conditions enumerated in this section is hereafter in this section called a "preferrred mortgage" as to such vessel.

(c) There shall be indorsed upon the documents of a vessel convered by a preferred mortgage—

(1) The names of the mortgagor and mortgagee;

(2) The time and date of the indorsement is made;

(3) The amount and date of maturity of the mortgage; and

(4) Any amount requried to be indorsed by the provisions of subdivision (e) or (f) of this subsection.

(d) Such indorsement shall be made (1) by the collector of customs of the port of documentation of the mortgaged vessel, or (2)—by the collector of customs of any port in which the vessel if found, if such collector is directed to make the indorsement by the collector of customs of the port of documentation; and no clearance shall be issued to the vessel until such indorsement is made. The collector of customs of the port of documentation shall give such direction by wire or letter at the request of the mortgagee and upon the tender of the cost of communication of such direction. Whenever any new document is issued for the vessel, such indorsement shall be transferred to and indorsed upon the new document by the collector of customs.

(e) A mortgage which includes property other than a vessel shall not be held a preferred mortgage unless the mortgage provides for the separate discharge of such property by the payment of a specified portion of the mortgage indebtedness. If a preferred mortgage so provides for the separate discharge, the amount of the portion of such payment shall be indorsed upon the documents of the vessel.

(f) If a preferred mortgage includes more than one vessel and provides for the separate discharge of each vessel by the payment of a portion of the mortgage indebtedness, the amount of such portion of such payment shall be endorsed upon the documents of the vessel. In case such mortgage does not provide for the separate discharge of a vessel and the vessel is to be sold upon the order of a district court of the United States in a suit in rem in admiralty, the court shall determine the portion of the mortgage indebtedness increased by 20 per centum (1) which, in the opinion of the court, the approximate value of the vessel bears to the approximate value of all the vessels covered by the mortgage, and (2) upon the payment of which the vessel shall be discharged from the mortgage.

SUBSECTION L (46 APP. U.S.C. 952)

Notwithstanding another law, the United States as mortgagee may enforce a preferred mortgage lien in a suit in rem in admiralty under this Act. In [any] *a* suit in rem in admiralty for the enforcement of the preferred mortgage lien, the *district* court *exercising admiralty jurisdiction* may appoint a receiver and, in its discretion, authorize the receiver to operate the mortgaged vessel. *When the United States is the mortgagee, the court authorizing the receiver to operate the mortgaged vessel shall order compensation to be paid to the United States for the use of the vessel.* The marshal may be authorized and directed by the court to take possession of the mortgaged vessel notwithstanding the fact that the vessel is in the possession or under the control of a person claiming a possessory common-law lien.

46 U.S.C. Parts C and J

TITLE 46—SHIPPING

Subtitle	Section
I. [Reserved—general]	101
II. Vessels and seamen	2101

[BALANCE OF TITLE RESERVED]

Subtitle II—Vessels and Seamen

PART A—GENERAL PROVISIONS

Chapter	Section
21. General	2101
23. Operation of vessels generally	2301

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[Part C—Reserved for Load Lines of Vessels]

Part C—Load Lines of Vessels

51. Load lines 5101

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[Part J—Reserved for Measurement of Vessels]

Part J—Measurement of Vessels

141. General 14101
143. Convention measurement 14301
145. Regulatory measurement 14501
147. Penalties 14701

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[Part C—Reserved for Load Lines of Vessels]

Part C—Load Lines of Vessels

CHAPTER 51—LOAD LINES

Sec.
5101. Definitions.
5102. Application.
5103. Load line requirements.
5104. Assignment of load lines.
5105. Load line surveys.
5106. Load line certificate.
5107. Delegation of authority.
5108. Special exemptions.
5109. Reciprocity for foreign vessels.
5110. Submersible vessels.
5111. Providing loading information.
5112. Loading restrictions.
5113. Detention of vessels.
5114. Use of Customs Service officers and employees for enforcement.
5115. Regulations.
5116. Penalties.

§ 5101. Definitions

In this chapter—

(1) "domestic voyage" means movement of a vessel between places in, or subject to the jurisdiction of, the United States, except movement between—

(A) a place in a territory or possession of the United States or the Trust Territory of the Pacific Islands; and

(B) a place outside that territory, possession, or Trust Territory.

(2) "economic benefit of the overloading" means the amount obtained by multiplying the weight of the overload (in tons) by the lesser of)

(A) the average freight rate value of a ton of the vessel's cargo for the voyage; or

(B) $50.

(3) "existing vessel" means—

(A) a vessel on a domestic voyage, the keel of which was laid, or that was at a similar stage of construction, before January 1, 1986; and

(B) a vessel on a foreign voyage, the keel of which was laid, or that was at a similar stage of construction, before July 21, 1968.

(4) "freeboard" means the distance from the mark of the load line assigned under this chapter to the freeboard deck.

(5) "freeboard deck" means the deck or other structure the Secretary prescribes by regulation.

(6) "minimum safe freeboard" means the freeboard that the Secretary decides cannot be reduced safely without limiting the operation of the vessel.

(7) "weight of the overload" means the amount obtained by multiplying the number of inches that the vessel is submerged below the applicable assigned freeboard by the tons-an-inch immersion factor for the vessel at the assigned minimum safe freeboard.

§ 5102. Application

(a) Except as provided in subsection (b) of this section, this chapter applies to the following:

(1) a vessel of the United States.

(2) a vessel on the navigable waters of the United States.

(3) a vessel—

(A) owned by a citizen of the United States or a corporation established by or under the laws of the United States or a State; and

(B) not registered in a foreign country.

(4) a public vessel of the United States.

(5) a vessel otherwise subject to the jurisdiction of the United States.

(b) This chapter does not apply to the following:

(1) a vessel of war.

(2) a recreational vessel when operated only for pleasure.

(3) a fishing vessel.

(4) a fish processing vessel of not more than 5,000 gross tons that—

(A)(i) was constructed as a fish processing vessel before August 16, 1974; or

(ii) was converted for use as a fish processing vessel before January 1, 1983; and

(B) is not on a foreign voyage.

(5) a fish tender vessel of not more than 500 gross tons that—

(A)(i) was constructed, under construction, or under contract to be constructed as a fish tender vessel before January 1, 1980; or

(ii) was converted for use as a fish tender vessel before January 1, 1983; and

(B) is not on a foreign voyage.

(6) a vessel of the United States on a domestic voyage that does not cross the Boundary Line, except a voyage on the Great Lakes.

(7) a vessel of less than 24 meters (79 feet) overall in length.

(8) a public vessel of the United States on a domestic voyage.

(9) a vessel excluded from the application of this chapter by an international agreement to which the United States Government is a party.

(10) an existing vessel of not more than 150 gross tons that is on a domestic voyage.

(11) a small passenger vessel on a domestic voyage.

(c) On application by the owner and after a survey under section 5105 of this title, the Secretary may assign load lines for a vessel excluded from the application of this chapter under subsection (b) of this section. A vessel assigned load lines under this subsection is subject to this chapter until the surrender of its load line certificate and the removal of its load line marks.

(d) This chapter does not affect an international agreement to which the Government is a party that is not in conflict with the International Convention on Load Lines currently in force for the United States.

§ 5103. Load line requirements

(a) A vessel may be operated only if the vessel has been assigned load lines.

(b) The owner, charterer, managing operator, agent, master, and individual in charge of a vessel shall mark and maintain the load lines permanently and conspiciously in the way prescribed by the Secretary.

§ 5104. Assignment of load lines

(a) The Secretary shall assign load lines for a vessel so that they indicate the minimum safe freeboard to which the vessel may be loaded. However, if the owner requests, the Secretary may assign load lines that result in greater freeboard than the minimum safe freeboard.

(b) In assigning load lines for a vessel, the Secretary shall consider—

(1) the service, type, and character of the vessel;

(2) the geographic area in which the vessel will operate; and

(3) applicable international agreements to which the United States Government is a party.

(c) An existing vessel may retain its load lines assigned before January 1, 1986, unless the Secretary decides that a substantial change in the vessel after those load lies were assigned requires that new load lines be assigned under this chapter.

(d) The minimum freeboard of an existing vessel may be reduced only if the vessel complies with every applicable provision of this chapter.

(e) The Secretary may designate by regulation specific geographic area that have less severe weather or sea conditions and from which there is adequate time to return to available safe harbors. The Secretary may reduce the minimum freeboard of a vessel operating in these areas.

§ 5105. Load line surveys

(a) The Secretary may provide for annual, renewal, and other load line surveys.

(b) In conducting a load line survey, the Secretary shall consider whether—

(1) the hull and fittings of the vessel—

(A) are adequate to protect the vessel from the sea; and

(B) meet other requirements the Secretary may prescribe by regulation;

(2) the strength of the hull is adequate for all loading conditions;

(3) the stability of the vessel is adequate for all loading conditions;

(4) the topsides of the vessel are arranged and constructed to allow rapid overboard drainage of deck water in heavy weather; and

(5) the topsides of the vessel are adequate in design, arrangement, and equipment to protect crewmembers performing outside tasks necessary for safe operation of the vessel.

§ 5106. Load line certificate

(a) On findings that a load line survey of a vessel under this chapter is satisfactory and that the vessel's load lines are marked correctly, the Secretary shall issue the vessel a load line certificate and deliver it to the owner, master, or individual in charge of the vessel.

(b) The certificate shall be maintained as required by the Secretary.

§ 5107. Delegation of authority

(a) The Secretary shall delegate to the American Bureau of Shipping or other similarly qualified organizations the authority to assign load lines survey vessels, determine that load lines are marked correctly, and issue load line certificates under this chapter.

(b) Under regulations prescribed by the Secretary, a decision of an organization delegated authority under subsection (a) of this section related to the assignment of a load line may be appealed to the Secretary.

(c) For a vessel intended to be engaged on a foreign voyage, the Secretary may delegate to another country that is a party to the International Convention on Load Lines, 1966, the authority to assign load lines, survey vessels, determine that the load lines are marked correctly, and issue an International Load Line Certificate (1966).

(d) The Secretary may terminate a delegation made under this section after giving written notice to the organization.

§ 5108. Special exemptions

(a) The Secretary may exempt a vessel from any part of this chapter when—

(1) the vessel is entitled to an exemption under an international agreement to which the United States Government is a party; or

(2) under regulations (including regulations on special operations conditions) prescribed by the Secretary, the Secretary finds that good cause exists for granting an exemption.

(b) When the Secretary grants an exemption under this section, the Secretary may issue a certificate of exemption stating the extent of the exemption.

(c) A certificate of exemption issued under subsection (b) of this section shall be maintained as required by the Secretary.

§ 5109. Reciprocity for foreign vessels

(a) When the Secretary finds that the laws and regulations of a foreign country related to load lines are similar to those of this chapter and the regulations prescribed under this chapter, or when a foreign country is a party to an international load line agreement to which the United States Government is a party, the Secretary shall accept the load line marks and certificate of a vessel of that foreign country as complying with this chapter and the regulations prescribed under this chapter. The Secretary may control the vessel as provided for in the applicable international agreement.

(b) Subsection (a) of this section does not apply to a vessel of a foreign country that does not recognize load lines assigned under this chapter.

§ 5110. Submersible vessels

Notwithstanding sections 5103–5105 of this title, the Secretary may prescribe regulations for submersible vessels to provide a minimum level of safety. In developing the regulations, the Secretary shall consider factors relevant to submersible vessels, including the structure, stability, and watertight integrity of those vessels.

§ 5111. Providing loading information

The Secretary may prescribe regulations requiring the owner, charterer, managing operator, and agent of a vessel to provide loading information (including information on loading distribution, stability, and margin of strength) to the master or individual in charge of the vessel in a language the master or individual understands.

§ 5112. Loading restrictions

(a) A vessel may not be loaded in a way that submerges the assigned load line or the place at which the load line is required to be marked on the vessel.

(b) If the loading or stability conditions of a vessel change, the master or individual in charge of the vessel, before moving the vessel, shall record in the official logbook or other permanent record of the vessel—

(1) the position of the assigned load line relative to the water surface; and

(2) the draft of the vessel fore and aft.

(c) A vessel may be operated only if the loading distribution, stability, and margin of strength are adequate for the voyage or movement intended.

(d) Subsections (a) and (b) of this section do not apply to a submersible vessel.

§ 5113. Detention of vessels

(a) When the Secretary believes that a vessel is about to leave a place in the United States in violation of this chapter or a regula-

tion prescribed under this chapter, the Secretary may detain the vessel by giving notice to the owner, charterer, managing operator, agent, master, or individual in charge of the vessel.

(b) A detained vessel may be cleared under section 4197 of the Revised Statutes (46 App. U.S.C. 91) only after the violation has been corrected. If the vessel was cleared before being detained, the clearance shall be withdrawn.

(c) Under regulations prescribed by the Secretary, the owner, charterer, managing operator, agent, master, or individual in charge of a detained vessel may petition the Secretary to review the detention order.

(d) After reviewing a petition, the Secretary may affirm, withdraw, or change the detention order. Before acting on the petition, the Secretary may require any independent survey that may be necessary to determine the condition of the vessel.

(e) The owner of a vessel is liable for the cost incident to a petition for review and any required survey if the vessel is found to be in violation of this chapter or a regulation prescribed under this chapter.

§ 5114. Use of Customs Service officers and employees for enforcement

(a) With the approval of the Secretary of the Treasury, the Secretary may use an officer or employee of the United States Customs Service to enforce this chapter and the regulations prescribed under this chapter.

(b) The Secretary shall consult with the Secretary of the Treasury before prescribing a regulation that affects the enforcement responsibilities of an officer or employee of the Customs Service.

§ 5115. Regulations

The Secretary may prescribe regulations to carry out this part.

§ 5116. Penalties

(a) Except as otherwise provided in this section, the owner, charterer, managing operator, agent, master, and individual in charge of a vessel violating this chapter or a regulation prescribed under this chapter are each liable to the United States Government for a civil penalty of not more than $5,000. Each day of a continuing violation is a separate violation. The vessel also is liable in rem for the penalty.

(b) The owner, charterer, managing operator, agent, master, and individual in charge of a vessel allowing causing, attempting to cause, or failing to take reasonable care to prevent a violation of section 5112(a) of this title are each liable to the Government for a civil penalty of not more than $10,000 plus an additional amount equal to twice the economic benefit of the overloading. The vessel also is liable in rem for the penalty.

(c) The master or individual in charge of a vessel violating section 5112(b) of this title is liable to the Government for a civil penalty of not more than $5,000. The vessel also is liable in rem for the penalty.

(d) A person causing or allowing the departure of a vessel from a place within the jurisdiction of the United States in violation of a

detention order issued under section 5113 of this title shall be fined not more than $10,000, imprisoned for not more than one year, or both.

(e) A person causing or allowing the alteration, concealment, or removal of a mark placed on a vessel under section 5103(b) of this title and the regulations prescribed under this chapter, except to make a lawful change or to escape enemy capture in time of war, shall be fined not more than $10,000, imprisoned for not more than 2 years, or both.

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[PART J—RESERVED FOR MEASUREMENT OF VESSELS]

PART J—MEASUREMENT OF VESSELS

CHAPTER 141—GENERAL

Sec.
14101. Definitions.
14102. Regulations.
14103. Delegations of authority.
14104. Measurement to determine application of a law.

§ 14101. Definitions

In this part—

(1) "Convention" means the International Convention on Tonnage Measurement of Ships, 1969.

(2) "existing vessel" means a vessel the keel of which was laid or that was at a similar stage of construction before July 18, 1982.

(3) "Great Lakes" means—

(A) the Great Lakes; and

(B) the St. Lawrence River west of—

(i) a rhumb line drawn from Cap des Rosiers to West Point, Anticosti Island; and

(ii) on the north side of Anticosti Island, the meridian of longitude 63 degrees west.

(4) "vessel engaged on a foreign voyage" means a vessel—

(A) arriving at a place under the jurisdiction of the United States from a place in a foreign country;

(B) making a voyage between places outside the United States (except a foreign vessel engaged on that voyage);

(C) departing from a place under the jurisdiction of the United States for a place in a foreign country; or

(D) making a voyage between a place within a territory or possession of the United States and another place under the jurisdiction of the United States not within that territory or possession.

§ 14102. Regulations

The Secretary may prescribe regulations to carry out this part.

§ 14103. Delegation of authority

(a) The Secretary may delegate to a qualified person the authority to measure a vessel and issue an International Tonnage Certificate

(1969) or other appropriate certificate of measurement under this part.

(b) Under regulations prescribed by the Secretary, a decision of the person delegated authority under subsection (a) of this section related to measuring a vessel or issuing a certificate may be appealed to the Secretary.

(c) For a vessel intended to be engaged on a foreign voyage, the Secretary may delegate to another country that is a party to the Convention the authority to measure the vessel and issue an International Tonnage Certificate (1969) under chapter 143 of this title.

(d) The Secretary after giving written notice to the person may terminate a delegation made under this section.

§ 14104. Measurement to determine application of a law

When the application of a law of the United States to a vessel depends on the vessel's tonnage, the vessel shall be measured under this part.

CHAPTER 143—CONVENTION MEASUREMENT

Sec.
14301. Application.
14302. Measurement.
14303. International Tonnage Certificate (1969).
14304. Remeasurement.
14305. Optional regulatory measurement.
14306. Reciprocity for foreign vessels.
14307. Inspection of foreign vessels.

§ 14301. Application

(a) Except as otherwise provided in this section, this chapter applies to the following:

(1) a documented vessel.

(2) a vessel that is to be documented under chapter 121 of this title.

(3) a vessel engaged on a foreign voyage.

(b) This chapter does not apply to the following:

(1) a vessel of war.

(2) a vessel of less than 24 meters (79 feet) overall in length.

(3) a vessel operating only in the Great Lakes, unless the owner requests.

(4) a vessel (except a vessel engaged on a foreign voyage) the keel of which was laid or that was at a similar stage of construction before January 1, 1986, unless—

(A) the owner requests; or

(B) the vessel undergoes a change that the Secretary finds substantially affects the vessel's gross tonnage.

(5) before July 19, 1994, an existing vessel unless—

(A) the owner requests; or

(B) the vessel undergoes a change that the Secretary finds substantially affects the vessel's gross tonnage.

(c) A vessel made subject to this chapter at the request of the owner may be remeasured only as provided by this chapter.

(d) After July 18, 1994, an existing vessel (except an existing vessel referred to in subsection (b)(5)(A) or (B) of this section) may retain its tonnages existing on July 19, 1994, for the application of relevant *requirements under international agreements (except the Convention) and other laws of the United States. However, if the vessel undergoes a change substantially affecting its tonnage after July 18, 1994, the vessel shall be remeasured under this chapter.*

(e) This chapter does not affect an international agreement to which the United States Government is a party that is not in conflict with the Convention or the application of IMO Resolutions A.494 (XII) of November 19, 1981, A.540 (XIII) of November 17, 1983, and A.541 (XIII) of November 17, 1983.

§ 14302. Measurement

(a) The Secretary shall measure a vessel to which this chapter applies in the way provided by this chapter and the Convention.

(b) A vessel measured under this chapter may not be required to be measured under another law.

(c) Unless otherwise provided by law, the measurement of a vessel under this chapter applies to a law of the United States whose applicability depends on a vessel's tonnage, if that law—

(1) becomes effective after July 18, 1994; or

(2) is in effect before July 19, 1994, is not enumerated in section 14305 of this title, and is identified by the Secretary by regulation as a law to which this chapter applies.

§ 14303. International Tonnage Certificate (1969)

(a) After measuring a vessel under this chapter, the Secretary shall issue, on request of the owner, an International Tonnage Certificate (1969) and deliver it to the owner or master of the vessel.

(b) The certificate shall be maintained as required by the Secretary.

§ 14304. Reimbursement

(a) To the extent necessary, the Secretary shall remeasure a vessel to which this chapter applies if—

(1) the Secretary or the owner alleges an error in its measurement; or

(2) the vessel or the use of its space is changed in a way that substantially affects its tonnage.

(b) Except as provided in this chapter or section 14504 of this title, a vessel that has been measured does not have to be remeasured to obtain another document or endorsement under chapter 121 of this title.

§ 14305. Optional regulatory measurement

(a) On the request of the owner of a documented vessel measured under this chapter, the Secretary also shall measure the vessel under chapter 145 of this title. The tonnages determined under that chapter shall be used in applying—

(1) parts A, B, C, E, F, and G and sections 12106(c) and 12108(c) of this title;

(2) section 3(d)(3) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 903(d)(3));

(3) section 4 of the Bridge to Bridge Radiotelephone Act (33 U.S.C. 1203(a));

(4) section 4(a)(3) of the Ports and Waterways Safety Act (33 U.S.C. 1223(a)(3);

(5) section 4283 of the Revised Statutes of the United States (46 App. U.S.C. 183);

(6) sections 27 and 27A of the Act of June 5, 1920 (46 App. U.S.C. 883 and 883-1);

(7) Act of July 14, 1956 (46 U.S.C. 883a);

(8) section 351, 352, 355, and 356 of the Ship Radio Act (47 U.S.C. 351, 352, 354, and 354a);

(9) section 403 of the Commercial Fishing Industry Vessel Act (46 U.S.C. 3302 note);

(10) the Officers' Competency Certificates Convention, 1936, and sections 8303 and 8304 of this title;

(11) the International Convention for the Safety of Life at Sea as provided by IMCO Resolution A.494 (XII) of November 19, 1981;

(12) the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, 1978, as provided by IMO Resolution A.540 (XIII) of November 17, 1983;

(13) the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, as provided by IMO Resolution A.541 (XIII) of November 17, 1983;

(14) provisions of law establishing the threshold tonnage levels at which evidence of financial responsibility must be demonstrated; or

(15) unless otherwise provided by law, any other law of the United States in effect before July 19, 1994, and not listed by the Secretary under section 14302(c) of this title.

(b) As long as the owner of a vessel has a request in effect under subsection (a)(1) of this section, the tonnages determined under that request shall be used in applying the other provisions of law described in subsection (a)(1) to that vessel.

§ 14306. Reciprocity for foreign vessels

(a) When the Secretary finds that the laws and regulations of a foreign country related to measurement of vessels are similar to those of this chapter and the regulations prescribed under this chapter, or when a foreign country is a party to the Convention, the Secretary shall accept the measurement and certificate of a vessel of that foreign country as complying with this chapter and the regulations prescribed under this chapter.

(b) Subsection (a) of this section does not apply to a vessel of a foreign country that does not recognize measurements under this chapter. The Secretary may apply measurement standards the Secretary considers appropriate to the vessel, subject to applicable international agreements to which the United States Government is a party.

§ 14307. Inspection of foreign vessels

(a) The Secretary may inspect a vessel of a foreign country to verify that—

(1) the vessel has an International Tonnage Certificate (1969) and the main characteristics of the vessel correspond to the information in the certificate; or

(2) if the vessel is from a country not a party to the Convention, the vessel has been measured under laws and regulations similar to those of this chapter and the regulations prescribed under this chapter.

(b) For a vessel of a country that is a party to the Convention, if the inspection reveals that the vessel does not have an International Tonnage Certificate (1969) or that the main characteristics of the vessel differ from those stated on the certificate or other records in a way that increases the gross or net tonnage of the vessel, the Secretary promptly shall inform the country whose flag the vessel is flying.

(c) For a vessel of a country not a party to the Convention—

(1) if the vessel has been measured under laws and regulations that the Secretary finds are similar to those of this chapter and the regulations prescribed under this chapter, the vessel shall be deemed to have been issued an International Tonnage Certificate (1969); and

(2) if the vessel has not been measured as described in clause (1) of this subsection, the Secretary may measure the vessel.

(d) An inspection under this section shall be conducted in a way that does not delay a vessel of a country that is a party to the Convention.

CHAPTER 145—REGULATORY MEASUREMENT

SUBCHAPTER I—GENERAL

Sec.

14501. Application.
14502. Measurement.
14503. Certificate of measurement.
14504. Remeasurement.

SUBCHAPTER II—FORMAL SYSTEMS

14511. Application.
14512. Standard tonnage measurement.
14513. Dual tonnage measurement.

SUBCHAPTER III—SIMPLIFIED SYSTEM

14521. Application.
14522. Measurement.

SUBCHAPTER I—GENERAL

§ 14501. Application

This chapter applies to the following:

(1) a vessel not measured under chapter 143 of this title if—

(A) the vessel is to be documented under chapter 121 of this title; or

(B) the application of a law of the United States to the vessel depends on the vessel's tonnage.

(2) a vessel measured under chapter 143 of this title if the owner requests that the vessel also be measured under this chapter as provided in section 14305 of this title.

§ 14502. Measurement

The Secretary shall measure a vessel to which this chapter applies in the way provided by this chapter.

§ 14503. Certificate of measurement

The Secretary shall prescribe the certificate to be issued as evidence of a vessel's measurement under this chapter.

§ 14504. Remeasurement

(a) To the extent necessary, the Secretary shall remeasure a vessel to which this chapter applies if—

(1) the Secretary or the owner alleges an error in its measurements;

(2) the vessel or the use of its space is changed in a way that substantially affects its tonnage;

(3) after being measured under subchapter III of this chapter, the vessel becomes subject to subchapter II of this chapter because the vessel or its use is changed; or

(4) although not required to be measured under subchapter II of this chapter, the vessel was measured under subchapter II and the owner requests that the vessel be measured under subchapter III of this chapter.

(b) Except as provided in this section and chapter 143 of this title, a vessel that has been measured does not have to be remeasured to obtain another document or endorsement under chapter 121 of this title.

SUBCHAPTER II—FORMAL SYSTEMS

§ 14511. Applicant

This subchapter applies to a vessel described in section 14501 of this title of—

(1) the owner requests; or

(2) the vessel is—

(A) self-propelled;

(B) at least 24 meters (79 feet) overall in length; and

(C) not operated only for pleasure.

§ 14512. Standard tonnage measurement

(a) The Secretary shall prescribe regulations for measuring the gross and net tonnages of a vessel under this subchapter. The regulations shall provide for tonnages comparable to the tonnages that could have been assigned under sections 4151 and 4153 of the Revised Statutes of the United States, as sections 4151 and 4153 existed immediately before the enactment of this section.

(b) On application of the owner or master of a vessel of the United States used in foreign trade, the Secretary may attach an appendix to the vessel's register stating the measurement of spaces that may be deducted from gross tonnage under laws and regulations of other countries but not under those of the United States.

§ 14513. Dual tonnage measurement

(a) On application by the owner and approval by the Secretary, the tonnage of spaces prescribed by the Secretary may be excluded in measuring under this section the gross tonnage of a vessel measured under section 14512 of this title. The spaces prescribed by the Secretary shall be comparable to the spaces that could have been excluded under section 2 of the Act of September 29, 1965 (Public Law 89-219, 79 Stat. 891), as section 2 existed immediately before the enactment of this section.

(b) The Secretary shall prescribe the design, location, and dimensions of the tonnage mark to be placed on a vessel measured under this section.

(c)(1) If a vessel's tonnage mark is below the uppermost part of the load line marks, each certificate stating the vessel's tonnages shall state the gross and net tonnages when the mark is submerged and when it is not submerged.

(2) Except as provided in paragraph (1) of this subsection, a certificate stating a vessel's tonnage may state only one set of gross and net tonnages.

SUBCHAPTER III—SIMPLIFIED SYSTEM

§ 14521. Application

This subchapter applies to a vessel described in section 14501 of this title that is not measured under subchapter II of this chapter.

§ 14522. Measurement

(a) In this section, "length" means the horizontal distance of the hull between the foremost part of the stem and the aftermost part of the stern, excluding fittings and attachments.

(b)(1) The Secretary shall assign gross and net tonnages to a vessel based on its length, breadth, depth, other dimensions, and appropriate coefficients.

(2) The Secretary shall prescribe the way dimensions (except length) are measured and which coefficients are appropriate.

(c) The resulting gross tonnages, taken as a group, reasonably shall reflect the relative internal volumes of the vessels measured under this subchapter. The resulting net tonnages shall be in approximately the same ratios to corresponding gross tonnages as are the net and gross tonnages of comparable vessels measured under subchapter II of this chapter.

(d) Under regulations prescribed by the Secretary, the Secretary may determine the gross and net tonnages of a vessel representative of a designated class, model, or type, and then assign those gross and net tonnages to other vessels of the same class, model, or type.

CHAPTER 147—PENALTIES

Sec.
14701. General violation.
14702. False statement.

§ 14701. General violation

The owner, charter, managing operator, agent, master, and individual in charge of a vessel violating this part or a regulation prescribed under this part are each liable to the United States Government for a civil penalty of not more than $20,000. Each day of a continuing violation is a separate violation. The vessel also is liable in rem for the penalty.

§ 14702. False statements

A person knowningly making of false statement or representation in a matter in which a statement or representation is required by this part or a regulation prescribed under this part is liable to the United States Government for a civil penalty of not more than $20,000 for each false statement or representation. The vessel also is liable in rem for the penalty.

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14 U.S.C. ANALYSIS CHAPTER 17

CHAPTER 17—ADMINISTRATION

Sec.
631. Delegation of powers by the Secretary.
632. Functions and powers vested in the Commandment.
633. Regulations.
634. Officers holding certain offices.
635. Oaths required for boards.
636. Administration of oaths.

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633. Submission of plans to Congress.
634. User fees

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14 U.S.C. 651

§ 651. Annual report

In April of each year, the Commandment, through the Secretary, shall report to Congress the operations and expenditures of the

Coast Guard during the [preceding fiscal year.] *preceding fiscal year, including amounts collected as provided under section 664 of this title.*

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14 U.S.C. 663, 664

§ 663. Submission of plans to Congress

The President shall submit to Congress with each budget request for the Coast Guard the current copy of the Coast Guard's Capital Investment Plan, Cutter Plan, Aviation Plan, and Shore Facilities Plan.

§ 664. User Fees

(a) Amounts collected under section 9701 of title 31 or another law by the Secretary for a service or thing of value provided by the Coast Guard shall be deposited in the general fund of the Treasury as proprietary receipts of the department in which the Coast Guard is operating and ascribed to Coast Guard activities.

(b) A fee charged for a service or thing of value provided by the Coast Guard must be—

(1) prescribed as provided under section 9701 of title 31; and

(2) based on the following:

(A) fairness;

(B) the costs to the United States Government;

(C) the value of the service or thing to the recipient;

(D) equity among transportation modes;

(E) effect on the ability of the Coast Guard to perform its duties or functions under this title;

(F) public policy or interest served; and

(G) other relevant factors.

(c) A fee may not be charged for a service or thing of value provided by the Coast Guard if the service or thing of value—

(1) is required for national defense or emergency search and rescue;

(2) benefits a large segment of the public; or

(3) is actually performed by the private sector.

(d) The Secretary may grant an exemption from the user fee requirements of this section to a person subject to a fee.

(e) Before January 1 of each year, the Secretary shall submit a report to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate that includes—

(1) a verification of each activity for which a user fee is collected stating—

(A) the amount collected in the prior fiscal year; and

(B) that the amount spent on that activity in that fiscal year are not less than the amount collected; and

(2) the amount expected to be collected in the current fiscal year for each activity for which a fee is expected to be charged.

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45 U.S.C. 2101

§ 2101. General definitions

In this subtitle—

* * * * * * *

(20) "oil" including oil of any type or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes except dredged spoil.

(20a) "overall in length" means—

(A) for a foreign vessel or a vessel engaged on a foreign voyage, the greater of—

(i) 96 percent of the length on a waterline at 85 percent of the least molded depth measured from the top of the keel (or on a vessel designed with a rake of keel, on a waterline parallel to the designed waterline); or

(ii) the length from the fore side of the stem to the axis of the rudder stock on that waterline; and

(B) for any other vessel, the horizontal distance of the hull between the foremost part of the stem and the aftermost part of the stern, excluding fittings and attachments.

* * * * * * *

(46) "vessel of the United States" means a vessel documented or numbered under the laws of the United States.

(47) "vessel of war" means a vessel—

(A) belonging to the armed forces of a country;

(B) bearing the external marks distinguishing vessels of war of that country;

(C) under the command of an officer commissioned by the government of that country and whose name appears in the appropriate service list or its equivalent; and

(D) staffed by a crew under regular armed forces discipline.

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46 U.S.C. 2102

§ 2102. Limited definitions

In [chapters 43] *chapters 37, 43, 51,* and 123 of this title and part I of this subtitle—

(1) "eligible State" means a State that has a State recreational boating safety program accepted by the Secretary.

(2) "State" and "United States", in addition to their meanings under section 2101(36) and (44) of this title, include the Trust Territory of the Pacific Islands.

(3) "State recreational boating safety program" means education, assistance, and enforcement activities conducted for

marine casualty prevention, reduction, and reporting for recreational boating.

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46 U.S.C. 2109, 2110

§ 2109. Public vessels

[This] *Except as otherwise provided*, this subtitle does not apply to a public vessel of the United States. However, this subtitle does apply to a vessel (except a Coast Guard or a Saint Lawrence Seaway Development Corporation vessel) owned or operated by the Department of Transportation or by any corporation organized or controlled by the Department.

§ 2110. Fees prohibited

Fees may not be charged or collected by the Secretary for services provided for in this subtitle related to the engagement and discharge of seamen, the inspection and [examination of vessels,] *examination of vessels under part B of this subtitle*, the licensing of masters, mates, pilots, and engineers, and the [measurement or] documentation of vessels, except when specifically provided for in this subtitle.

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46 U.S.C. 3701

§ 3701. Definitions

In this chapter—

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[(5) "State, in addition to its meaning under section 2101(36) of this title, includes the Trust Territory of the Pacific Islands.

[(6) "United States", in addition to its meaning under section 2101(44) of this title, includes the Trust Territory of the Pacific Islands.]

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46 U.S.C. 12102

§ 12102. Vessels eligible for documentation

(a) A vessel of at least 5 net tons not registered under the laws of a foreign country is eligible for documentation if the vessel is owned by—

(1) an individual who is a citizen of the United States;

(2) an association, trust, joint venture, or other entity—

(A) all of whose members are citizens of the United States; and

(B) that is capable of holding title to a vessel under the laws of the United States or of a State;

(3) a partnership whose general partners are citizens of the United States, and the controlling interest in the partnership is owned by citizens of the United States;

(4) a corporation established under the laws of the United States or of a State, whose president or other chief executive officer and chairman of its board of directors are citizens of the

United States and no more of its directors are noncitizens than a minority of the number necessary to constitute a quorum;

(5) the United States Government; or

(6) the government of a State.

(b) A vessel is eligible for documentation only if it has been measured under part J of this subtitle. However, the Secretary may issue a temporary certificate of documentation for a vessel before it is measured.

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46 App. U.S.C. 71–72, 74–75, 77, 81, 83–83k, 86–86i, 88–88i, 420

[§ 71. Measurement of vessels

[(a) Mandatory requirement; timeframe

[Before a vessel is documented or recorded under the laws of the United States, or where the application of a law of United States to a vessel is determined by its tonnage, the vessel shall be measured by the Secretary of the department in which the Coast Guard is operating. The Secretary may, by regulation, provide for the temporary documentation of a vessel prior to the measurement required by this section.

[(b) Statutory provisions applicable

[A vessel required to be measured under subsection (a) of this section, other than a vessel used exclusively for pleasure, shall be measured as prescribed in sections 75 and 77 of this title, and to the extent applicable, as prescribed in sections 83 to 83k of this title if—

[(1) it engages or intends to engage in an international voyage by sea; or

[(2) it is at least twenty-four meters in length and is self-propelled.

[(c) Voluntary measurement determinations of gross and net tonnages

[A vessel not required to be measured under subsection (b) of this section may be so measured if requested by its owner. A vessel not measured under subsection (b) of this section shall be assigned gross and net tonnages by the Secretary which are functions of its length, breadth, depth, and other dimensions, including appropriate coefficients. The Secretary shall prescribe the manner in which dimensions are measured and which coefficients are appropriate. The resulting gross tonnages, taken as a group, shall reasonably reflect the relative internal volumes of the vessels measured, and the resulting net tonnages shall be in approximately the same ratios to corresponding gross tonnages as are the net and gross tonnages of comparable vessels measured under subsection (b) of this section. In accordance with regulations issued under this subsection, the Secretary may determine the gross and net tonnages of a vessel which is representative of a designated class, model, or type and may assign those gross and net tonnages to other vessels of the same class, model, or type.

[(d) Remeasurement

[A vessel shall be remeasured if—

[(1) the vessel is altered or the use of its space is changed so that its gross or net tonnage is affected;

[(2) having been measured under subsection (c) of this section, the vessel becomes, by use or alteration, subject to subsection (b) of this section; or

[(3) having been measured under subsection (b) of this section and not required to be so measured, the owner requests that the vessel be measured under subsection (c) of this section.

[Except as provided in this subsection, a vessel that has been measured is not required to be remeasured to obtain another document.

[(e) Regulations

[The Secretary shall make such regulations as may be necessary to carry out the provisions of this section and sections 72, 74, 75, and 77 of this title.

[§ 72. Evidence of admeasurement

[The Secretary of the Treasury shall prescribe how evidence of admeasurement shall be given.]

[§ 74. Repealed. Pub. L. 96-594, Title I, § 127, Dec. 24, 1980, 94 Stat. 3459]

[§ 75. Cabins or staterooms excluded from measurement

[No part of any vessel shall be required by section 74 of this title to be measured or registered for tonnage that is used for cabins or staterooms, and constructed entirely above the first deck, which is not a deck to the hull.]

[§ 77. Tonnage

[The tonnage deck, in vessels having three or more decks to the hull, shall be the second deck from below; in all other cases the upper deck of the hull is to be the tonnage deck. All measurements are to be taken in feet and decimal fractions of feet.

[The register tonnage of every vessel built within the United States or owned by a citizen or citizens thereof shall be her entire internal cubical capacity in tons of one hundred cubic feet each, to be ascertained as follows: Measure the length of the vessel in a straight line along the upper side of the tonnage desk, from the inside of the inner plank, average thickness, deducting from this length what is due to the rake of the bow in the thickness of the deck, and what is due to the rake of the stern timber in the thickness of the deck, and also what is due to the rake of the stern timber in one-third of the round of the beam; divide the length so taken into the number of equal parts required by the following table, according to the class in such table to which the vessel belongs:

Table of Classes

[Class one. Vessels of which the tonnage length according to the above measurement is fifty feet or under: into six equal parts.

[Class two. Vessels of which the tonnage length according to the above measurement is above fifty feet, and not exceeding one hundred feet: into eight equal parts.

[Class three. Vessels of which the tonnage length, according to the above measurement is above one hundred feet, and not exceed one hundred and fifty feet: into ten equal parts.

[Class four. Vessels of which the tonnage length according to the above measurement is above one hundred and fifty feet, and not exceeding two hundred feet: into twelve equal parts.

[Class five. Vessels of which the tonnage length according to the above measurement is above two hundred feet, and not exceeding two hundred and fifty feet: into fourteen equal parts.

[Class six. Vessels of which the tonnage length according to the above measurement is above two hundred and fifty feet: into sixteen equal parts.

[Then, the hold being sufficiently cleared to admit the required depths and breadths being properly taken, find the transverse area of such vessel at each point of division of the length as follows:

[Measure the depth at each point of division at a distance of one-third of the round of the beam below such deck; or, in case of a break, below a line stretched in continuation thereof, to the upper side of the floor timber, at the inside of the limber strake, after deducting the average thickness of the ceiling, which is between the bilge planks and limber strake; then, if the depth at the midship division of the length do not exceed sixteen feet, divide each depth into four equal parts; then measure the inside horizontal breadth, at each of the three points of division, and also at the upper and lower points of the depth extending each measurement to the average thickness of that part of the ceiling which is between the points of measurement; number these breadths from above, numbering the upper breadth one, and so on down to the lowest breadth; multiply the second and fourth by four, and the third by two; add these products together, and to the sum add the first breadth and the last, or fifth; multiply the quantity thus obtained by one-third of the common interval between the breadths, and the product shall be deemed the transverse area; but if the midship depth exceed sixteen feet, divide each depth into six equal parts, instead of four, and measure as before directed the horizontal breadths at the five points of division, and also at the upper and lower points of the depth; number them from above as before; multiply the second, fourth, and sixth by four, and the third and fifth by two; add these products together, and to the sum add the first breadth and the last, or seventh; multiply the quantities thus obtained by one-third of the common interval between the breadths, and the products shall be deemed the transverse area.

[Having thus ascertained the transverse area at each point of division of the length of the vessel, as required above, proceed to ascertain the register tonnage of the vessel in the following manner:

[Number the areas successively one, two, three, and so forth, number one being at the extreme limit of the length at the bow, and the last number at the extreme limit of the length at the stern; then, whether the length be divided according to the table into six or sixteen parts, as in classes one and six or any intermediate number, as in classes two, three, four and five, multiply the second, and every even-numbered area by four, and the third, and every odd-numbered area, except the first and last, by two; add these products together, and to the sum add the first and last if they yield anything; multiply the quantities thus obtained by one-third of the common interval between the areas, and the product will be the cubical contents of the space under the tonnage deck; divide this product by one hundred, and the quotient, being the tonnage under the tonnage deck, shall be deemed to be the register tonnage of the vessel, subject to the addition hereinafter mentioned.

[If there be a break, a poop, or any other permanent closed-in space on the upper deck, or the spar deck, available for cargo, or stores, or for the berthing or accommodation of passengers or crew, the tonnage of such space shall be ascertained as follows:

[Measure the internal mean length of such space in feet, and divide it into an even number of equal parts of which the distance as under shall be most nearly equal to those into which the length of the tonnage deck has been divided; measure at the middle of its height the inside breaths, namely, one at each end at each of the points of division, numbering them successively one, two, three, and so forth; then to the sum of the end breadths add four times the sum of the even-numbered breadths and twice the sum of the odd-numbered, breadths, except the first and last, and multiply the whole sum by one-third of the common interval between the breadths; the product will give the mean horizontal area of such space; then measure the mean height between the planks of the decks, and multiply by it the mean horizontal area; divide the product by one hundred, and the quotient shall be deemed to be the tonnage of such space, and shall be added to the tonnage under the tonnage decks, ascertained as aforesaid.

[If a vessel has a third deck, or spar deck, the tonnage of the space between it and the tonnage deck shall be ascertained as follows:

[Measure in feet the inside length of the space, at the middle of its height, from the plank at the side of the stem to the plank on the timbers at the stern, and divide the length into the same number of equal parts into which the length of the tonnage deck is divided; measure, also at the middle of its height, the inside breadths of the space at each of the points of division, also the breadth of the stem and the breadth of the stern; number them successively one, two, three, and so forth, commencing at the stem; multiply the second, and all other even-numbered breadths, by four, and the third, and all the other odd-numbered breadths, except the first and last, by two; to the sum of these products add the first and last breadths, multiply the whole sum by one-third of the common interval between the breadths, and the result will give, in superficial feet, the mean horizontal area of such space; measure the mean height between the plank of the two decks, and multiply by it the mean horizontal area, and the product will be the cubical contents of the space; divide this product by one hundred, and the quotient shall be deemed to be the tonnage of such space, and shall be added to the other tonnage of the vessel, ascertained as above directed. And if the vessel has more than three decks, the tonnage of each space between decks, above the tonnage deck, shall be severally ascertained in the manner above described, and shall be added to the tonnage of the vessel, ascertained as above directed.

[In ascertaining the tonnage of open vessels the upper edge of the upper strake is to form the boundary line of measurement, and the depth shall be taken from an athwartship line, extending from the upper edge of such strake at each division of the length.

[From the gross tonnage of every vessel of the United States there shall be deducted—

[(a) The tonnage of the spaces or compartments occupied by or appropriated to the use of the crew of the vessel. Every place appropriated to the crew of the vessel shall have a space of not less than seventy-two cubic feet and not less than twelve superficial feet, measured on the deck or floor of that place, for each seaman or apprentice lodged therein. Such place shall be securely constructed, properly lighted, drained, and ventilated, properly protected from weather and sea, and as far as practicable properly shut off and protected from the effluvium of cargo or bilge water; and failure to comply with this provision shall subject the owner to a penalty of $500. Every place so occupied shall be kept free from goods or stores of any kind not being the personal property of the crew in use during the voyage; and if any such place is not so kept free, the master shall forfeit and pay to each seaman or apprentice lodged in that place the sum of 50 cents a day for each day during which any goods or stores as aforesaid are kept or stored in the place after complaint has been made to him by any two or more of the seamen so lodged. No deduction from tonnage as aforesaid shall be made unless there is permanently cut in a beam and over the doorway of every such place the number of men it is allowed to accommodate with these words, "Certified to accommodate seamen."

[(b) Any space exclusively for the use of the master certified by the collector to be reasonable in extent and property constructed, and the words "Certified for the accommodation of master" to be permanently cut in a beam and over the door of such space.

[(c) Any space used exclusively for the working of the helm, the capstan, and teh anchor gear, or for keeping the charts, signals, and other instruments of navigation and boatswain's stores, and the words "Certified for steering gear", or "Certified for boatswain's stores", or "certified chart house", as the case may be, to be permanently cut in the beam and over the doorway of each of such spaces.

[(d) The space occupied by the donkey engine and boiler, if connected with the main pumps of the ships.

[(e) Space occupied by machinery used exclusively to separate, clarify, purify, or process, a ship's own slop oil mixture, tank-cleaning residue, bilge residue, or other waste materials, including sewage[1] garbage, galley wastes, or trash and space occupied by any tank, tanks, or collection area used exclusively for the carriage or collection of such slop oil mixture, tank-cleaning residue, or other waste materials, but not to exceed a maximum space deduction established by regulations hereunder. The Secretary of the department in which the Coast Guard is operating in consultation with the Administrator of the Environmental Protection Agency, shall issue regulations to define the slop oil mixtures, cleaning residue, and waste materials, establish the maximum deductions which may be made, define the manner in which the spaces shall be used and marked, and as necessary otherwise to carry out the provisions of this paragraph.

[(f) In the case of a ship propelled wholly by sails any space, not exceedingly 2½ per centum of the gross tonnage, used exclusively for storage of sails: *Provided*, That spaces deducted shall be certified by the collector to be reasonable in extent and properly and efficiently constructed for the purposes for which they are intended, and the words "Certified for storage of sails" to be cut on the beam and over the doorway of such space.

[(g) In the case of a vessel which is screw propelled in whole or in part, the following deduction shall be made for the space occupied by the propelling machinery:

[(1) Thirty-two thirteenths times the tonnage of the propelling-machinery space, if the tonnage of that space is not more than 13 per centum of the gross tonnage of the vessel and if that space is reasonable in extent: *Provided, however*, That, in lieu thereof, the deduction shall be one and three-fourths times the tonnage of the propelling-machinery space, in the case of a vessel the construction of which was commenced on or before June 4, 1956, if the owner so elects;

[(2) Thirty-two per centum of the gross tonnage of the vessel, if the tonnage of the propelling-machinery space is more than 13 per centum and less than 20 per centum of the gross tonnage of the vessel; or

[(3) Thirty-two per centum of the gross tonnage of the vessel or one and three-fourths times the tonnage of the propelling-machinery space, whichever the owner of the vessel elects, if the tonnage of that space is 20 per centum or more of the gross tonnage of the vessel.

[(h) In the case of a vessel which is propelled in whole or in part by paddle wheels, the following deduction shall be made for the space occupied by the propelling machinery:

[(1) Thirty-seven twentieths times the tonnage of the propelling-machinery space, if the tonnage of that space is not more than 20 per centum of the gross tonnage of the vessel and if that space is reasonable in extent: *Provided, however*, That, in lieu thereof, the deduction shall be one and one-half times the tonnage of the propelling-machinery space, in the case of a vessel the construction of which was commenced on or before June 4, 1956, if the owner so elects;

[(2) Thirty-seven per centum of the gross tonnage of the vessel, if the tonnage of the propelling-machinery space is more than 20 per centum and less than 30 per centum of the gross tonnage of the vessel; or

[(3) Thirty-seven per centum of the gross tonnage of the vessel or one and one-half times the tonnage of the propelling-machinery space, whichever the owner elects, if the tonnage of that space is 30 per centum or more of the gross tonnage of the vessel.

[(i) If there be a break, a poop, or any other permanent closed-in space on the upper deck available for cargo or stores, or for the berthing or accommodation of passengers or crew, the tonnage of that space shall be ascertained and added to the gross tonnage: *Provided*, That nothing shall be added to the gross tonnage for any sheltered space above the upper deck which is under cover and open to the weather; that is, not inclosed.

[The cubical contents of the hatchways shall be obtained by multiplying the length and breadth together and the product by the mean depth taken from the top of beam to the under side of the hatch. From the aggregate tonnage of the hatchways there shall be deducted one-half of 1 per cent of the gross tonnage and the remainder only shall be added to the gross tonnage of the ship exclusive of the tonnage of the hatchways.

[(j) On a request in writing to the Commissioner of Customs by the owners of a ship the tonnage of such portion of the space or spaces above the crown of the engine room and above the upper deck as is framed in for the machinery or for the admission of light and air and not required to be added to gross tonnage shall, for the purpose of ascertaining the tonnage of the space occupied by the propelling power, be added to the tonnage of the engine space; but it shall then be included in the gross tonnage; such space or spaces must be reasonable in extent, safe, and seaworthy, and can not be used for any purpose other than the machinery or for the admission of light and air to the machinery or boilers of the ship.

[But the outstanding registers or enrollments of vessels of the United States shall not be rendered void by the addition of such new statement of her tonnage, unless voluntarily surrendered; but the same may be added to the outstanding document or by an appendix thereto, with a certificate of a collector of customs that the orginal estimate of tonnage is amended.

[In the case of a ship constructed with a double bottom of water ballast, if the space between the inner and outer plating thereof is certified by the collector to be not available for the carriage of cargo, stores, or fuel, then the depth of the vessel shall be taken to be the upper side of the inner plating of the double bottom, and that upper side shall for the purposes of measurement be deemed to represent the floor timber. From the gross tonnage there shall be deducted any other space adapted only for water ballast certified by the collector not to be available for the carriage of cargo (other than ballast water for use for underwater drilling, mining, and related purposes, including production), stores, supplies, or fuel.

[Upon application by the owner or master of an American vessel in foreign trade, collectors of customs, under regulations to be approved by the Commissioner of Customs, are authorized to attach to the register of such vessel an appendix stating separately, for use in foreign ports, the measurement of such space or spaces as are permitted to be deducted from gross tonnage by the rules of other nations and are not permitted by the laws of the United States.

[In every vessel documented as a vessel of the United States the number denoting her net tonnage shall be deeply carved or otherwise permanently marked on her main beam, and shall be so continued; and if the number at any time cease to be continued such vessel shall be subject to a fine of $30 on every arrival in a port of the United States if she have not her tonnage number legally carved or permanently marked.]

[§ 81. Measurement of foreign vessels; certificates

[Whenever it is made to appear to the Commissioner of Customs that the rules concerning the measurement for tonnage of vessels of the United States have been substantially adopted by the government of any foreign country, he may direct that the vessels of such foreign country be deemed to be of the tonnage denoted in their certificates of register or other national papers, and thereupon it shall not be necessary for such vessels to be remeasured at any port of the United States; and when it shall be necessary to ascertain the tonnage of any vessel not a vessel of the United States, the said tonnage shall be ascertained in the manner provided by law for the measurement of vessels in the United States.]

[§ 83. Gross and net tonnage measurements; definitions

[As used in sections 83 to 83k of this title:

[(a) The term "uppermost complete deck" means the uppermost complete deck of a vessel exposed to sea and weather, which shall be deemed to be that deck which has permanent means of closing all openings in the weather portions thereof, provided that any opening in the side of the vessel below that deck, other than an opening abaft a transverse watertight bulkhead placed aft of the rudder stock, is fitted with a permanent means of watertight closing.

[(b) The term "second deck" means the deck next below the uppermost complete deck which is continuous in a fore-and-aft direction at least between peak bulkheads, is continuous athwartships, is fitted as an integral and permanent part of the vessel's structure, and has proper covers to all main hatchways. Interruptions in way of propelling machinery space openings, ladder and stairway openings, trunks, chain lockers, cofferdams, or steps not exceeding a total height of forty-eight inches shall not be deemed to break the continuity of the deck.

[(c) The term "trunks" as used in the definition of second deck shall be deemed to refer to hatch or ventilation trunks which do not extend longitudinally completely between main transverse bulkheads.

[(d) The term "Secretary" means the Secretary of the Treasury

[§ 83a. Spaces omitted from gross tonnage

[In the measurement of a vessel under sections 71, 75, 77 of this title, upon application of the owner and approval by the Secretary, there shall be omitted from inclusion in the gross tonnage—

[(a) those spaces available for the carriage of dry cargo or stores which are located between the uppermost complete deck and the second deck, and other spaces so located which would be omitted from gross tonnage under the provisions of section 77 of this title if above the upper deck, provided that a tonnage mark is placed and displayed on the vessel in accordance with the provisions of sections 83 to 83k of this title, so long as that tonnage mark is not submerged;

[(b) those spaces which are located on or above the uppermost complete deck and which are available for the carriage of dry cargo or stores, without regard to whether a tonnage mark is placed or displayed on the vessel or, if placed or displayed, without regard to whether that mark is submerged; and

[(c) those spaces which are located on the uppermost complete deck and which are used for cabins or staterooms, provided that a tonnage mark is placed and displayed on the vessel, so long as that tonnage mark is not submerged.

[§ 83b. Description, location and dimensions of tonnage mark

[The tonnage mark shall be a horizontal line, upon which shall be placed for identification an inverted equilateral triangle, with its apex on the midpoint of the line. The mark shall be placed and displayed on each side of the vessel, subject to such specifications as to location and dimensions as are prescribed in regulations issued under sections 83 to 83k of this title.

[§ 83c. Placement of tonnage mark above loadline

[No tonnage mark shall be required to be placed or displayed above the statutory summer loadline prescribed in accordance with the applicable loadline convention, except that, when a vessel's statutory loadline is assigned on the assumption that the second deck is the freeboard deck, the tonnage mark may be permitted to be placed and displayed on a line level with the uppermost part of the loadline grid.

[§ 83d. Addition of line to tonnage mark

[Except when the tonnage mark is placed and displayed on the vessel at the level prescribed in section 83c of this title, an additional line may be added to the tonnage mark, subject to such specifications as to location and dimensions as are prescribed in regulations issued under sections 83 to 83k of this title.

[§ 83e. When tonnage mark deemed submerged

[The tonnage mark shall be deemed to be submerged when the upper edge of the mark is under water, except that if the vessel is marked with the additional line in accordance with section 83d of this title and is in fresh water or in tropical waters the tonnage mark shall not be deemed to be submerged unless the upper edge of the additional line is under water.

[§ 83f. Measurement certificates and marine documents reciting tonnages

[In a case in which a vessel measured under sections 83 to 83k of this title and other applicable statutes has a tonnage mark placed and displayed at a place other than a line level with the uppermost part of the loadline grid, any measurement certificate or marine document reciting tonnages issued to such vessel shall show the gross and net tonnages applicable when the tonnage mark is submerged and the gross and net tonnages applicable when the mark is not submerged. In any other case in which a vessel is measured under sections 83 to 83k of this title and other applicable statutes, any measurement certificate or marine document reciting tonnages issued to such vessel shall show only one set of gross and net tonnages, taking into account all applicable omissions or exemptions.

[§ 83g. Marking line of uppermost complete deck

[In a case in which an application for omission of spaces is filed under section 83a of this title for a vessel for which a statutory loadline is not required and is not assigned, the line of the uppermost complete deck shall be marked in the manner specified for marking the deck line in the international loadline convention in force.

[§ 83h. Regulations

[The Secretary shall make such regulations as may be necessary to carry out the provisions of sections 83 to 83k of this title.

[§ 83i. Penalty for false statements

[Any person who makes a false, fictitious, or fraudulent statement or representation in any matter in which such statement or representation is required to be made to the Secretary in any regulation issued under sections 83 to 83k of this title shall be subject to a penalty of not more than $1,000 for each such statement or representation.

[§ 83j. Penalty for failure to display tonnage mark

[If any tonnage mark required to be placed and displaced on a vessel is any regulation issued under sections 83 to 83k of this title by the Secretary is not so placed or displayed or if the mark at any time shall cease to be continued on the vessel, such vessel shall be subject to a penalty of $30 every subsequent arrival in a port of the United States.

[§ 83k. Remission of penalties

[Any penalty incurred under sections 83 to 83k of this title may be remitted or mitigated by the Secretary under the provisions of section 7 of this title.]

[§ 86. Enforcement; regulations; personnel

[The Secretary of the department in which the Coast Guard is operating (hereinafter referred to as "Secretary") shall enforce the provisions of this subchapter and prescribe regulations to carry out its provisions. With the consent of the Secretary of the Treasury, the Secretary may utilize officers of the Customs Service to enforce this subchapter and the regulations established hereunder.

[§ 86a. Definitions

[As used in this subchapter—

[(1) "new ship" means a vessel the keel of which is laid (or which is at a similar stage of construction) on or after July 21, 1968; and

[(2) "existing ship" means a vessel which is not a "new ship".

[§ 86b. Vessels subject to subchapter

[(a) Federal jurisdiction

[This subchapter applies to vessels which—

[(1) arrive at any port or place within the jurisdiction of the United States from foreign ports;

[(2) make voyages between foreign ports (except foreign vessels engaged in such voyages); or

[(3) depart from any port or place within the jurisdiction of the United States for a foreign port.

[(b) Excepted vessels

[This subchapter does not apply to—

[(1) ships of war;

[(2) pleasure craft not used in trade or commerce;

[(3) fishing vessels;

[(4) existing ships of less than one hundred and fifty gross tons;

[(5) new ships of less than seventy-nine feet in length;

[(6) vessels which navigate exclusively on the Great Lakes; or

[(7) vessels operating on sheltered waters between ports of the United States and neighboring countries as provided in any treaty of the United States.

[(c) Loadline vessels; surrender of loadline certificate; removal of loadline marks

[A vessel which voluntarily obtains loadlines shall be treated as a vessel subject to this subchapter until its loadline certificate is surrendered and its loadline marks removed.

[(d) Treaties or conventions unaffected

[This subchapter does not abrogate any provisions of treaties or conventions in effect, which are not in conflict with the International Convention on Loadlines, 1966, and to which the United States has acceded.

[§ 86c. Determination of loadlines

[(a) Minimum freeboard; criteria

[The Secretary shall prescribe loadlines, the marking thereof, and associated condition surveys for vessels subject to this subchapter to indicate the minimum freeboard to which each may be safely loaded, giving due consideration to, and making differentials for the service, type, and character of each vessel, and in conformance with applicable international treaties or conventions to which the United States has acceded.

[(b) Marking and maintaining loadlines; issuance of loadline certificate

[Loadlines shall be permanently and conspicuously marked and maintained in the manner prescribed by the Secretary. Upon completion of survey requirements and a finding that the loadline is positioned and marked in the manner prescribed, the Secretary shall issue a loadline certificate, to the master or owner of the vessel, which shall be carried on board the vessel.

[(c) Prescribed loadlines; minimum safe freeboard; greater freeboard than minimum safe freeboard

[A loadline shall not be established or marked which, in the judgment of the Secretary, authorizes less than the minimum safe freeboard. At the request of the owner a loadline may be established or marked to indicate a greater freeboard than that which the Secretary determines is the minimum safe freeboard; any such loadline shall be the prescribed loadline for purposes of section 86g of this title.

[§ 86d. Survey or registry of shipping

[(a) Appointments for determination of condition of vessels and positioning and marking of loadlines; issuances of loadline certificate.

[The Secretary shall appoint the American Bureau of Shipping, or such other United States nonprofit corporations or associations for the survey or registry of shipping which he approves, to determine that a vessel's condition is satisfactory and whether its loadline is positioned and marked in the manner prescribed by the Secretary and thereupon to issue a loadline certificate.

[(b) Appointees

[The Secretary may appoint for the purpose of this section:

[(1) any officer of the United States, or

[(2) at the request of a shipowner, any other corporation or association for the survey or registry of shipping which he approves.

[(c) Revocation of appointments

[The Secretary may revoke an appointment under this section at any time.

[§ 86e. Exemptions; certificate of exemption

[When a vessel subject to this subchapter is shown to be entitled to an exemption from the provisions of this subchapter by an international agreement to which the United States has acceded, a certificate of exemption shall be issued to the vessel, and carried in lieu of the certificate required by section 86c of this title.

[§ 86f. Foreign vessels

[(a) Compliance with subchapter by compliance with loadlines and markings of foreign country and issuance of foreign certificate; international agreement for control of foreign vessels

[When it is found the law and regulations in force in a foreign country relating to loadlines are equally effective as this subchapter and the regulations hereunder, or when a foreign country has acceded to an international loadline agreement to which the United States has acceded, the markings and certificate there of a vessel of the country shall be accepted as complying with the provisions of this subchapter and regulations hereunder. The control of such vessels shall be as provided in the applicable international agreement.

[(b) Reciprocal loadline recognition

[Subsection (a) of this section does not apply to vessels of foreign nations which do not similarly recognize the loadlines prescribed under this subchapter.

[§ 86g. Loading restrictions, submerging loadlines or loadline marks; recordation by masters of position of loadline marks and actual drafts

[(a) No vessel subject to this subchapter may be so loaded as to submerge the prescribed loadline, or to submerge the point where an appropriate loadline under the subchapter and the prescribed regulations should be marked.

[(b) The master of a vessel subject to this subchapter shall, after loading but before departing for a voyage by sea from any port or place in which this subchapter applies, record in the official logbook or other permanent record of the vessel a statement of the relative position of the prescribed loadline mark applicable at the time in question with respect to the water surface, and of the actual draft of the vessel, forward and aft, at the time, as nearly as they may be ascertained.

[§ 86h. Detention of vessels

[(a) Reasonable belief: notice to master or officer in charge of vessel; detention order

[When the Secretary has reason to believe that a vessel is about to leave a port in the United States or its possessions in violation of this subchapter or the regulations hereunder, the Secretary may, upon notifying the master or officer in charge of the vessel, order the vessel detained.

[(b) Clearance: refusal or withdrawal

[Clearance required by section 91 of this title shall be refused or withdrawn from any vessel so detained until correction of deficiencies.

[(c) Petition for review; regulations

[The master or officer in charge of a vessel may petition the Secretary, in a manner prescribed by regulation, to review the detention order.

[(d) Administative determination

[Upon receipt of a petition, the Secretary may withdraw the detention order, modify it, or require independent surveys as may be necessary to determine the extent of deficiencies. Upon completion of his review, including results of any required independent surveys he shall affirm, set aside, or modify the detention order.

[(e) Liability of owner for costs

[The owner of a vessel is liable for any costs incident to a petition for review and any independent surveys if the vessel is found to be in violation of this subchapter or the regulations hereunder.

§ 86i. Penalties for violations

[(a) Civil liability for violations of subchapter; separate violations

[Except as otherwise provided in this section, the owner and the master of a vessel found in violation of this subchapter or the regulations thereunder, are each liable to a civil penalty of not more than $1,000 for each day the vessel is in violation.

[(b) Civil liability for section 86g(a) violations

[Each person, if the owner, manager, agent, or master of a vessel who knowingly allows, causes, attempts to cause, or fails to take reasonable care to prevent the violation of section 86g(a) of this title or the regulations thereunder, is liable to a civil penalty of not more than $1,000 plus an additional amount of not more than $500 per inch of unlawful submergence.

[(c) Civil liability for section 86g(b) violations

[For any violation of subsection (b) of section 86g of this title or the regulations thereunder, the master of the vessel is liable to a civil penalty of not more than $500.

[(d) Criminal liability for departure in violation of detention orders

[Any person who knowingly causes or permits the departure of a vessel from any port or place within the jurisdiction of the United States or its possessions in violation of a detention order pursuant to section 86h of this title, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

[(e) Criminal liability for concealment, removal, alteration, defacement, or obliteration of vessel marks; lawful changes; wartime escape from enemy capture

[Any person who causes or allows the concealment, removal, alteration, defacement, or obliteration of any mark placed on a vessel pursuant to section 86c of this title and the regulations thereunder, except in the event of a lawful change or to escape enemy capture in time of war, shall be fined not more than $2,000 or imprisoned not more than two years or both.

[(f) Liability of vessel

[For any penalty under this section the vessel is also liable.

[(g) Administrative assessment, collection, remission, mitigation, or compromise

[The Secretary may assess and collect any civil penalty incurred under this subchapter and, in his discretion, remit, mitigate, or compromise any penalty prior to referral to the Attorney General.]

[§ 88. Establishment; vessels affected; exemptions

[(a) Load lines are established for merchant vessels of one hundred and fifty gross tons or over, loading at or proceeding to sea from any port or place within the United States or its possessions for a coastwise voyage by sea. By "coastwise voyage by sea" is meant a voyage on which a vessel in the usual course of her employment proceeds from one port or place in the United States or her possessions to another port or place in the United States or her possessions and passes outside the line dividing inland waters from the high seas, as defined in section 151 of Title 33.

[(b) Sections 88 to 88i of this title do not apply to—

[(1) a fish tender vessel of not more than 500 gross tons—

[(A) constructed, under construction, or contracted to be constructed as a vessel of this type before January 1, 1980; or

[(B) converted for use as a vessel of this type before January 1, 1983; and

[(2) a fish processing vessel of not more than 5,000 gross tons, except a vessel constructed after August 15, 1974, or converted for use as a vessel of this type after January 1, 1983.

[§ 88a. Load lines and marks indicating maximum depth of safe loading

[(a) Promulgation of regulations

[For vessels to which sections 88 to 88i of this title applies, the Secretary of the department in which the Coast Guard is operating shall establish by regulation load lines and marks indicating the maximum depth to which these vessels may be loaded safely.

[(b) Criteria for regulations

[In prescribing regulations under sections 88 to 88i of this title, the Secretary shall consider the age, condition, character, design, and construction of a vessel to which sections 88 to 88i of this title applies, including subdivision and stability characteristics.

[(c) Applicability to Great Lakes; exceptions

[Sections 88 to 88i of this title applies to the Great Lakes, except that the Secretary may establish special operating regulations for barges operating close to shore between Calumet Harbor, Illinois, and Burns Harbor, Indiana, that exempt these barges from the load line and marking requirements of this section.

[(d) Load lines above actual line of safety

[The Secretary may not establish on any vessel a load line that is above the actual line of safety.

[§ 88b. Marking lines on vessels; approval of marks; certificate

[It shall be the duty of the owner and of the master of every vessel subject to sections 88–88i of this title and to the regulations established thereunder to cause the load line or lines so established to be permanently and conspicuously marked upon the vessel in such manner as the Commandant of the Coast Guard shall direct, and to keep the same so marked. The Commandant of the Coast Guard shall appoint the American Bureau of Shipping, or such other American corporation or association for the survey or registry of shipping as may be selected by him, to determine whether the position and manner of marking on such vessels the load line or lines so established are in accordance with the provisions of said sections and of the regulations established thereunder: *Provided, however,* That, at the request of the shipowner, the Commandant of the Coast Guard may appoint, for the purpose aforesaid, any other corporation or association for the survey or registry of shipping which the Commandant of the Coast Guard may approve; or the Commandant of the Coast Guard may appoint for said purpose any officer of the Government, who shall perform such services as may be directed by the Commandant of the Coast Guard. The Commandant of the Coast Guard may, in his discretion, revoke any appointment made pursuant to this section. Such corporation, association or officer shall, upon approving the position and manner of marking of such load line or lines, issue a certificate, in a form to be prescribed by the Commandant of the Coast Guard, that the same are in accordance with the provisions of said sections and of the regulations established thereunder, and shall deliver a copy thereof to the master of the vessel. It shall be unlawful for any vessel subject to said sections and to said regulations to depart from any port or place designated in section 88 of this title without bearing such mark or marks, approved and certified by such corporation, association, or officer, and without having on board a copy of said certificate.

[§ 88c. Vessels so loaded as not to submerge lines or marks

[It shall be unlawful for any vessel subject to sections 88–88i of this title and to the regulations established thereunder to be so loaded as to submerge the load line or lines marked pursuant to section 88b of this title and to the regulations established thereunder applicable to her voyage; or to be so loaded as to submerge under like conditions the point where such load line or lines ought to be marked pursuant to the provisions of sections 88–88i of this title and of the regulations established thereunder; or to be so loaded as in any manner to violate the said regulations.

[§ 88d. Foreign vessels; application of sections 88–88i

[Whenever the Commandant of the Coast Guard shall certify that the laws and regulations in force in any foreign country relating to load lines are equally effective with the regulations established under sections 88–88i of this title, the Commandant of the Coast Guard may direct, on proof that a vessel of that country has complied with such foreign laws and regulations, that such vessel and her master and owner shall be exempted from compliance with the provisions of said sections, except as hereinafter provided: *Provided,* That this section shall not apply to the vessels of any foreign country which does not similarly recognize the load lines established under said sections and the regulations made thereunder.

[§ 88e. Recordation by masters of positions of load line and actual drafts

[It shall be the duty of the master of every vessel subject to sections 88–88i of this title and to the regulations established thereunder and of every foreign vessel exempted pursuant to section 88d of this title, before departing from her loading port or place to provide a ship's record or log book and enter therein a statement of the position of the load line marked applicable to the voyage in question and the actual drafts forward and aft at the time of departing as nearly as the said drafts can be ascertained.

[§ 88f. Detention of vessels loaded in violation of sections 88–88i

[If any collector of customs or Coast Guard district commander has reason to believe on complaint or otherwise that a vessel subject to the provisions of sections 88–88i of this title is about the proceed on a voyage from a port in the United States or its possessions within his district without conforming to the provisions of section 88b of this title, or when loaded in violation of section 88c of this title, or that any vessel exempted pursuant to section 88d of this title is about to proceed on a voyage from such port when loaded in violation of the laws and regulations of her country with respect to load line, he may serve on the master or officer in charge of such vessel a written order detaining the vessel for the purpose of being surveyed to determine whether or not the provisions of sections 88–88i of this title are complied with. Where the detention is on the ground that the vessel does not conform to the provisions of section 88b of this title, the collector or Coast Guard district commander shall cause an examination of the vessel to be made, and if from such examination it appears that the vessel is not marked with the load line established in conformity with the provisions of sections 88–88i of this title, the collector or Coast Guard district commander shall so notify the master or officer in charge of such vessel and shall detain her until the load line shall have been duly established in accordance with section 88b of this title, provided that in cases of exceptional hardship, subject to regulations issued by the Commander of the Coast Guard, the collector or Coast Guard district commander may cause a proper load line to be previously established by one of the agencies or persons designated under section 88b of this title, which provisional load line shall constitute a compliance with the provisions of sections 88–88i of this title only until completion of the particular voyage in which the vessel is at the time engaged. After such establishment or provisional establishment of a load line the collector or Coast Guard district commander shall appoint three disinterested surveyors to examine the loading of the vessel and to report to him whether such vessel is so loaded as to submerge said provisional load line and if from such report it appears that the vessel is so loaded, the collector or Coast Guard district commander may by written order served on the master or officer in charge of said vessel detain the vessel until she has been reloaded in whole or in part so as not to submerge said provisional load line or lines. Where the detention is on the ground of a supposed violation of section 88c or section 88d of this title, the collector or Coast Guard district commander shall appoint three disinterested surveyors to examine the vessel and her loading and to report to him and if from such report it appears that the vessel is loaded in violation of the provisions of section 88c or section 88d of this title, the collector or Coast Guard district commander shall so notify in writing the master or other officer in charge of such vessel and detain the vessel until she has been reloaded in whole or in part so as to conform to the provisions of section 88c or section 88d of this title. If a vessel is ordered detained by the collector or Coast Guard district commander acting under the provisions of this section, the master may within five days appeal to the Commandant of the Coast Guard, who, if he so desires, may order a further survey and may affirm, set aside, or modify the order of the collector or Coast Guard district commander. Clearance shall be refused to any vessel which shall have been ordered detained. The owner and agent of a vessel surveyed and found in violation of sections 88–88i of this title or regulations established thereunder shall bear the costs of the survey in addition to any penalty or fine imposed.

[§ 88g. Penalties for violations of sections 88–88i; seizure of vessels

[(a) The owner and/or master of any vessel subject to sections 88–88i of this title and the regulations established thereunder shall be liable to the United States in a penalty not to exceed $1,000 whenever the vessel is found operating, navigating, or otherwise in use upon the navigable waters of the United States, in violation of the provisions of such sections or the regulations established thereunder, or whenever, the vessel, if a vessel of the United States, is found operating, navigating, or otherwise in use upon the high seas in violation of the provisions of such sections or the regulations established thereunder. Each day a vessel is in violation of the provisions of such sections shall constitute a separate offense. The Secretary of the Department in which the Coast Guard is operating may assess, collect, remit, and mitigate any penalty imposed under such sections.

[(b) If the master of any vessel subject to sections 88–88i of this title, or of any foreign vessel exempted pursuant to section 88d of this title, shall fail, before departing from any port or place designated in section 88 of this title, to enter in and make a part of the ship's record or log book the statement required by section 88e of this title, he shall for each offense be liable to the United States in a penalty of $500.

[(c) If any person shall knowingly permit or cause or attempt to cause any vessel subject to sections 88–88i of this title or depart or arrive, or if, being the owner, manager, agent, or master of such vessel, he shall fail to take reasonable care to prevent her from departing from or arriving at any port or place designated in section 88 of this title when loaded in violation of section 88c of this title, or if any person shall knowingly permit or cause or attempt to cause a foreign vessel exempted pursuant to section 88d of this title to depart or arrive, or if, being the owner, manager, agent, or master of such vessel he shall fail to take reasonable care to prevent her from departing from or arriving at any port or place designated in section 88 of this title when loaded more deeply than permitted by the laws and regulations of the country to which she belongs, he shall, in respect of each offense, be liable to the United States, in a penalty of $1,000 plus a sum computed at the rate of $500 per inch of draft in excess of the vessel's applicable load line unless the vessel's departure or arrival was, under the circumstances, reasonable and justifiable.

[(d) If the master of any vessel or any other person shall knowingly permit or cause or attempt to cause any vessel to depart from any port in the United States or its possessions in violation of any order of detention made pursuant to section 88f of this title, he shall, in respect to each offense, be guilty of a misdemeanor and shall be punished by a fine or not to exceed $1,000 or by imprisonment not to exceed three months, or both such fine and imprisonment, in the discretion of the court.

[(e) If any person shall conceal, remove, alter, deface, or obliterate or shall suffer any person under his control to conceal, remove, alter, deface, or obliterate any mark or marks placed on a vessel pursuant to section 88–88i of this title or to the regulations established thereunder, except in the event of lawful change of said marks, or to prevent capture by an enemy, he shall in respect of each offense by guilty of a misdemeanor and shall be punished by a fine not to exceed $2,000, or by imprisonment not to exceed one year, or both such fine and imprisonment, in the discretion of the court.

[(f) Whenever the owner, manager, agent, or master of a vessel shall become subject to a fine or penalty by way of money payment pursuant to the provisions of sections 88–88i of this title, the vessel shall also be liable therefor and may be seized and proceeded against in the district court of the United States in any district in which such vessel may be found.

[§ 88h. Effective date

[The provisions of sections 88–88i of this title shall become effective as to vessels of four thousand gross tons and upwards, not later than three months, and as to all other vessels subject hereto, not later than twelve months from and after August 27, 1935.

[§ 88i. Short title

[Sections 88–88i of this title may be cited as the "Coastwise Load Line Act, 1935".]

[§ 420. Permits exempting specific cargo-carrying vessels in Alaska from inspection, etc., requirements

[*(a) Authority to issue; provisions subject to exemption*

[In order to minimize hardships and to aid inhabitants of certain remote areas in the State of Alaska, the Secretary of the Department in which the Coast Guard is operating is authorized to issue permits exempting specific cargo-carrying vessels from all or part of the requirements of the following laws and the regulations issued thereunder—

[(1) to (3) Repealed. Pub. L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 605

[(4) section 88 of this title.

[*(b) Prerequisites for issuance*

[A permit issued pursuant to subsection (a) of this section may be granted only to a vessel engaged in transporting cargo, including bulk fuel, from point to point within the State of Alaska and only if—

[(1) the vessel does not exceed three hundred gross tons;

[(2) the vessel is in a condition which does not present an immediate threat to the safety of life or the environment; and

[(3) the vessel was operating in the waters off Alaska as of June 1, 1976, or the vessel is a replacement for a vessel which was operating in the waters off Alaska as of June 1, 1976, if the vessel which is being replaced is no longer in service.

[(c) Limitation on operations subsequent to issuance

[Except in a situation declared to be an emergency by the Secretary of the department in which the Coast Guard is operating, a vessel operating under permit may not transport cargo to or from a point if the cargo could be transported by another commercial vessel which is reasonably available and which does not require exemptions to legally operate or if the cargo could be readily transported by overland routes.

[(d) Terms and conditions

[A permit may be issued for a specific voyage or for a period of time not exceeding one year. The permit may impose specific requirements as to the amount or type of cargo to be carried, manning, the areas of specific routes over which the vessel may operate, or other similar matters. The duration of the permit and any restrictions contained therein shall be at the sole discretion of the Secretary or his delegate.

[(e) Dangerous condition, manner of operation, etc., of vessel; remedies available to designated Coast Guard official

[If a designated Coast Guard official has reason to believe that a vessel to which a permit has been issued is in a condition or is used in a manner which creates an immediate threat to the safety of life or the environment or is operated in a manner which is inconsistent with the terms of the permit, the official may direct the operator to take immediate and reasonable steps to safeguard life and the environment, including directing the vessel to a port or other refuge.

[**(f) Revocation; civil penalty**

[If a vessel to which a permit has been issued creates an immediate threat to the safety of life or the environment, or is operated in a manner inconsistent with the terms of the permit or the requirements of subsection (c) of this section, the permit may be revoked. The owner, master, or person in charge of a vessel to which a permit is issued, who willfully permits the vessel to be used or uses the vessel in a manner inconsistent with the terms of the permit or subsection (c) of this section, shall be liable to a civil penalty of not more than $1,000.]

PANAMA CANAL ACT OF 1979, PUBLIC LAW 96-70, 93 STAT. 452

TITLE I—ADMINISTRATION AND REGULATIONS

* * * * * * *

CHAPTER 6—TOLLS FOR USE OF THE PANAMA CANAL

* * * * * * *

SEC. 1603. CALCULATION OF INTEREST.

(a) * * *

(b) The investment of the United States described in subsection (a) of this section—

(1) shall be increased by—

(A) the amount of expenditures from appropriations to the Commission made on or after October 1, 1979, and

(B) the value of property transferred to the Commission by any other department or agency of the United States, as determined in accordance with subsection (c) of this section; [and]

(2) shall be decreased by—

(A) the amount of the funds covered into the Panama Canal Commission Fund pursuant to section 3712 of this title,

(B) the value of property transferred to the Republic of Panama pursuant to this chapter or any other Act on or after October 1, 1979, and

(C) the value of property transferred by the Commission to any other department or agency of the United States[.] *and*

(3) the investment of the United States shall be also increased by the amount of tolls and other receipts that covers interest on the investment of the United States and that has been or is deposited in the Panama Canal Commission Fund as of December 31, 1985.

COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION ACT

TRANS-ALASKA OIL PIPELINE

* * * * * * *

TITLE II

SHORT TITLE

SEC. 201. This title may be cited as the "Trans-Alaska Pipeline Auhorization Act."

* * * * * * *

LIABILITY

SEC. 204. (a)(1) * * *

* * * * * * *

(b) If any area *in the State of Alaska* within or without the right-of-way or permit area granted under this title is polluted by any activities *related to the trans-Alaska oil pipeline* conducted by or on behalf of the holder to whom such right-of-way or permit was granted, and such pollution damages or threatens to damage aquatic life, wildlife, or public or private property, the control and total removal of the pollutant shall be at the expense of such holder, including any administrative and other costs incurred by the Secretary or any other Federal officer or agency. Upon failure of such holder to adequately control and remove such pollutant, the Secretary, in cooperation with other Federal, State, or local agencies, or in cooperation with such holder, or both, shall have the right to accomplish the control and removal at the expense of such holder. *This subsection shall not apply to removal costs resulting from oil pollution as that term is defined in section 6101 of the Comprehensive Oil Pollution Liability and Compensation Act.*

* * * * * * *

[(c)(1) Notwithstanding the provisions of any other law, if oil that has been transported through the trans-Alaska pipeline is loaded on a vessel at the terminal facilities of the pipeline, the owner and operator of the vessel (jointly and severally) and the Trans-Alaska Pipeline Liability Fund established by this subsection, shall be strictly liable without regard to fault in accordance with the provisions of this subsection for all damages, including clean-up costs, sustained by any person or entity, public or private, including residents of Canada, as the result of discharges of oil from such vessel.

[(2) Strict liability shall not be imposed under this subsection if the owner or operator of the vessel, or the Fund, can prove that the damages were caused by an act of war or by the negligence of the United States or other governmental agency. Strict liability shall not be imposed under this subsection with respect to the claim of a damaged party if the owner or operator of the vessel, or the Fund, can prove that the damage was caused by the negligence of such party.

[(3) Strict liability for all claims arising out of any one incident shall not exceed $100,000,000. The owner and operator of the vessel shall be jointly and severally liable for the first $14,000,000 of such claims that are allowed. Financial responsibility for $14,000,000 shall be demonstrated in accordance with the provisions of section 311(p) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(p)) before the oil is loaded. The Fund shall be liable for the balance of the claims that are allowed up to $100,000,000. If the total claims allowed exceed $100,000,000, they shall be reduced proportionately. The unpaid portion of any claim may be asserted and adjudicated under other applicable Federal or State law.

[(4) The Trans-Alaska Pipeline Liability Fund is hereby established as a non-profit corporate entity that may sue and be sued in its own name. The Fund shall be administered by the holders of the trans-Alaska pipeline right-of-way under regulations prescribed by the Secretary. The Fund shall be subject to an annual audit by the Comptroller General, and a copy of the audit shall be submitted to the Congress.

[(5) The operator of the pipeline shall collect from the owner of the oil at the time it is loaded on the vessel a fee of five cents per barrel. The collection shall cease when $100,000,000 has been accumulation in the Fund, and it shall be resumed when the accumulation in the Fund falls below $100,000,000.

[(6) The collection under paragraph (5) shall be delivered to the Fund. Costs of administration shall be paid from the money paid to the Fund, and all sums not needed for administration and the satisfaction of claims shall be invested prudently in income-producing securities approved by the Secretary. Income from such securities shall be added to the principal of the Fund.

[(7) The provisions of this subsection shall apply only to vessels engaged in transportation between the terminal facilities of the pipeline and ports under the jurisdiction of the United States. Strict liability under this subsection shall cease when the oil has first been brought ashore at a port under the jurisdiction of the United States.

[(8) In any case where liability without regard to fault is imposed pursuant to this subsection and the damages involved were caused by the unseaworthiness of the vessel or by negligence, the owner and operator of the vessel, and the Fund, as the case may be, shall be subrogated under applicable State and Federal laws to the rights under said laws of any person entitled to recovery hereunder. If any subrogee brings an action based on unseaworthiness of the vessel or negligence of its owner or operator, it may recover from any affiliate of the owner or operator, if the respective owner or operator fails to satisy any claim by the subrogee allowed under this paragraph.

[(9) This subsection shall not be interpreted to preempt the field of strict liability or to preclude any State from imposing additional requirements.

[(10) If the Fund is unable to satisfy a claim asserted and finally determined under this subsection, the Fund may borrow the money needed to satisy the claim from any commercial credit source, at the lowest available rate of interest, subject to approval of the Secretary.

[(11) For purposes of this subsection only, the term "affiliate" includes—

[(A) Any person owned or effectively controlled by the vesel owner or operator; or

[(B) Any person that effectively controls or has the power effectively to control the vessel owner or operator by—

[(i) stock interest, or

[(ii) representation on board of directors or similar body, or

[(iii) contract or other agreement with other stockholders, or

[(iv) otherwise; or

[(C) Any person which is under common ownership or control with the vessel owner or operator.

[(12) The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization.]

* * * * * * *

SECTION 17 OF THE INTERVENTION ON THE HIGH SEAS ACT

[SEC. 17. The revolving fund established under section 311(k) of the Federal Water Pollution Control Act shall be available to the Secretary for Federal actions and activities under section 5 of this Act.]

SEC. 17. The Oil Spill Liability Trust Fund established under section 9505 of the Internal Revenue Code of 1954 shall be available to the Secretary for actions and activities relating to oil pollution (as defined in section 6101 of the Comprehensive Oil Pollution Liability and Compensation Act), or the substantial threat of oil pollution, taken under section 5 of this Act.

FEDERAL WATER POLLUTION CONTROL ACT

* * * * * * *

TITLE III—STANDARDS AND ENFORCEMENT

* * * * * * *

OIL AND HAZARDOUS SUBSTANCE LIABILITY

SEC. 311. (a) For the purpose of this section, the term—

(1) * * *

* * * * * * *

(17) "Otherwise subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided for by international agreement to which the United States is a party[.]*;*

(18) "person in charge" means the individual immediately responsible for the operation of a vessel or facility.

* * * * * * *

(b)(1) * * *

* * * * * * *

(5) Any person in charge of a vessel or of an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge of oil or a hazardous substance from such vessel or facility in violation of paragraph (3) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge. Any such person (A) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, or (B) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) of this subsection and who is otherwise subject to the jurisdiction of the United States at the time of the discharge, or (C) in charge of an onshore facility or an offshore facility, who fails to notify immediately such agency of such discharge shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person *or his employer* in any criminal case, except a prosecution for perjury or for giving a false statement.

* * * * * * *

(6)(A) Any owner, operator, **[**or person in charged**]** *person in charge, or employer of such person in charge* of any onshore facility or offshore facility from which oil or a hazardous substance in discharged in violation of paragraph (3) of this subsection shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense. Any owner, operator, **[**or person in charge**]** *person in charge, or employer of such person in charge* of any vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, and any owner, operator, **[**or person in charge**]** *person in charge, or employer of such person in charge* of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) who is otherwise subject to the jurisdiction of the United States at the time of discharge, shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense. No penalty shall be assessed unless **[**the owner or operator**]** *whoever being* charged shall have been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. Any such civil penalty may be compromised by such Secretary. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation, shall be considered by such Secretary. The Secretary of the Treasury shall withhold at the request of such Secretary the clearance required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91), of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to such Secretary.

* * * * * * *

(B) The Administrator, taking into account the gravity of the offense, and the standard of care manifested by the owner, operator, [or person in charge] *person in charge, or employer of such person in charge* may commence a civil action against any such person subject to penalty under subparagraph (A) of this paragraph to impose a penalty based on consideration of the size of the business of the owner or operator, the effect on the ability of the owner or operator to continue in business, the gravity of the violation, and the nature, extent and degree of success of any efforts made by the owner, operator, [or person in charge] *person in charge, or employer of such person in charge* to minimize or mitigate the effects of such discharge. The amount of such penalty shall not exceed $50,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, operator, [or person in charge] *person in charge, or employer of such person in charge* such penalty shall not exceed $250,000. Each violation is a separate offense. Any action under this subparagraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to assess such penalty. No action may be commenced under this clause where a penalty has been assessed under clause (A) of this paragraph.

* * * * * * *

(c)(1) * * *

(2) Within sixty days after the effective date of this section, the President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances, pursuant to this subsection. Such National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and removal of oil and hazardous substances, and shall include, but not be limited to—

(A) * * *

* * * * * * *

(H) a system whereby the State or States affected by a discharge of oil or hazardous substances may act where necessary to remove such discharge and such State or States may be reimbursed [from the fund established under subsection (k) of this section for the reasonable costs incurred in such removal], *in the case of any discharge of oil from a vessel or facility, for the reasonable costs incurred in such removal from the Oil Spill Liability Trust Fund.*

* * * * * * *

(d) Whenever a marine disaster in or upon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and the public and private shorelines and beaches of the United States, because of a discharge, or an imminent discharge, or large quantities of oil, or of a hazardous substance from a vessel the United States may (A) coordinate and direct all public and private efforts directed at the removal or elimination of such threat; and (B) summarily remove, and, if necessary, destroy such vessel by whatever are available without regard to any provisions of law governing the employment of personnel or the expenditure of appropriated funds. [Any expense incurred under this subsection *or under the Intervention on the High Seas Act (or the convention defined in section 2(3) thereof)* shall be a cost incurred by the United States Government for the purposes of subsection (f) in the removal of oil or hazardous substance.]

* * * * * * *

(i)[(1)] In any case where an owner or operator of a vessel or an onshore facility or an offshore facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section acts to remove such oil or substance in accordance with regulations promulgated pursuant to this section, such owner or operator shall be entitled to recover the reasonable costs incurred in such removal upon establishing, in a suit which may be brought against the United States Government in the United States Claims Court, that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether such act or omission was or was not negligent, or of any combination of the foregoing clauses.

[(2) The provisions of this subsection shall not apply in any case where liability is established pursuant to the Outer Continental Shelf Lands Act, *or the Department Port Act of 1974*.

[(3) Any amount paid in accordance with a judgment of the United States Court of Claims pursuant to this section shall be paid from the funds established pursuant to subsection (k).]

* * * * * * *

[(k) *(1)* There is hereby authorized to be appropriated to a revolving fund to be established in the Treasury *such sums as may be necessary to maintain such fund at a level of* $35,000,000 to carry out the provisions of subsections (c), (d), (i), and (l) of this section. Any other funds received by the United States under this section shall also be deposited in said fund for such purposes. All sums appropriated to or deposited in, said fund shall remain available until expended.

(2) The Secretary of Transportation shall notify the Congress whenever the unobligated balance of the fund is less than $12,000,000, and shall include in such notification a recommendation for a supplemental appropriation relating to the sums that are needed to maintain the fund at the level provided in paragraph (1).]

(l) The President is authorized to delegate the administration of this section to the heads of those Federal departments, agencies, and instrumentalities which he determines to be appropriate. [Any moneys in the fund established by subsection (k) of this section shall be available to such Federal departments, agencies, and instrumentalities to carry out the provisions of subsections (c) and (i) of this section.] Each such department, agency, and instrumentality, in order to avoid duplication of effort, shall, whenever appropriate, utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities.

* * * * * * *

[(p)(1) Any vessel over three hundred gross tons, including any barge of equivalent size, but not including any barge that is not self-propelled and that does not carry oil or hazardous substances as cargo or fuel, using any port or place in the United States or the navigable waters of the United States for any purpose shall establish and maintain under regulations to be prescribed from time to time by the President, evidence of financial responsibility of, *in the case of an inland oil barge $125 per gross ton of such barge, or $125,000, whichever is greater, and in the case of any other vessel, $150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, $250,000), whichever is greater,* to meet the liability to the United States which such vessel could be subjected under this section. In cases where an owner or operator owns, operates, or charters more than one such vessel, financial responsibility need only be established to meet the maximum liability to which the largest of such vessels could be subjected. Financial responsibility may be established by any one of, or a combination of, the following methods acceptable to the President: (A) evidence of insurance, (B) surety bonds, (C) qualification as a self-insurer, or (D) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

[(2) The provisions of paragraph (1) of this subsection shall be effective April 3, 1971, with respect to oil and one year after the date of enactment of this section with respect to hazardous substances. The President shall delegate the responsibility to carry out the provisions of this subsection to the appropriate agency within sixty days after the date of enactment of this section. Regulations necessary to implement this subsection shall be issued within six months after the date of enactment of this section.

[(3) Any claim for costs incurred by such vessel may be brought directly against the insurer or any other person providing evidence of financial responsibility as required under this subsection. In the case of any action pursuant to this subsection such insurer or other person shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against him by the claimant, and which would have been available to him if an action had been brought against him by the owner or operator.

[(4) Any owner or operator of a vessel subject to this subsection, who fails to comply with the provisions of this subsection or any regulation issued thereunder, shall be subject to a fine of not more than $10,000.

[(5) The Secretary of the Treasury may refuse the clearance required by section 4197 of the Revised Statutes of the United States, as amended (4 U.S.C. 91), to any vessel subject to this subsection, which does not have evidence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

[(6) The Secretary of the Department in which the Coast Guard is operated may (A) deny entry to any port or place in the United States or the navigable waters of the United States, to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection, which upon request, does not produce evidence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.]

* * * * * * *

(s) The Oil Spill Liability Trust Fund shall be available to carry out subsections (c), (d), (i), and (l) as those subsections relate to discharges of oil. Any amounts received by the United States under this section with respect to claims arising on or after the effective date of this subsection shall be deposited in the Oil Spill Liability Trust Fund.

DEEP WATER PORT ACT OF 1974

* * * * * * *

LICENSE FOR THE OWNERSHIP, CONSTRUCTION, AND OPERATION OF A DEEPWATER PORT

SEC. 4. (a) * * *

* * * * * * *

(c) The Secretary may issue a license in accordance with the provisions of this Act if—

(1) he determines that the applicant is financially responsible and will meet the requirements of [section 18(l) of this Act;] *section 6505 of the Comprehensive Oil Pollution Liability and Compensation Act;*

* * * * * * *

LIABILITY

SEC. 18. (a)(1) * * *

* * * * * * *

[(b) Any individual in charge of a vessel or a deepwater port shall notify the Secretary as soon as he has knowledge of a discharge of oil. Any such individual who fails to notify the Secretary immediately of such discharge shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than 1 year, or both. Notification received pursuant to this subsection, or information obtained by the use of such notification, shall not be used against any such individual in any criminal case, except a prosecution for perjury or for giving a false statement.]

* * * * * * *

[(c)](*b*)(1) Whenever any oil is discharged from a vessel within any safety zone, from a vessel which has received oil from another vessel at a deepwater port, or from a deepwater port, the Secretary shall remove or arrange for the removal of such oil as soon as possible, unless he determines such removal will be done properly and expeditiously by the licensee of the deepwater port or the owner or operator of the vessel from which the discharge occurs.

(2) Removal of oil and actions to minimize damage from oil discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan for removal of oil and hazardous substances established pursuant to section 311(c)(2) of the Federal Water Pollution Control Act, as amended.

(3) Whenever the Secretary acts to remove a discharge of oil pursuant to this subsection, he is authorized to draw upon money available in the [Deepwater Port Liability Fund established pursuant to subsection (f) of this section] *Oil Spill Liability Trust Fund.* Such money shall be used to pay promptly for all cleanup costs incurred by the Secretary in removing or in minimizing damage caused by such oil discharge.

[(d) Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the owner and operator of a vessel shall be jointly and severally liable, without regard to fault, for cleanup costs and for damages that result from a discharge of oil from such vessel within any safety zone, or from a vessel which has received oil from another vessel at a deepwater port, except when such vessel is moored at a deepwater port. Such liability shall not exceed $150 per gross ton or $20,000,000, whichever is lesser, except that if it can be shown that such discharge was the result of gross negligence or willful misconduct within the privity and knowledge of the owner or operator, such owner and operator shall be jointly and severally liable for the full amount of all cleanup costs and damages.

[(e) Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the licensee of a deepwater port shall be liable, without regard to fault, for cleanup costs and damage that result from a discharge of oil from such deepwater port or from a vessel moored at such deepwater port. Such liability shall not exceed $50,000,000, except that if it can be shown that such damage was the result of gross negligence or willful misconduct within the privit and knowledge of the licensee, such licensee shall be liable for the full amount of all cleanup costs and damages.]

[(f)(1) There is established a Deepwater Port Liability Fund (hereinafter referred to as the "Fund") as a nonprofit corportate entity which may sue or be sued in its own name. The Fund shall be administered by the Secretary.

[(2) The Fund shall be liable, without regard to fault, for all cleanup costs and all damages in excess of those actually compensated pursuant to subsections (d) and (e) of this section.

[(3) Each license shall collect from the owner of any oil loaded or unloaded at the deepwater port operated by such licensee, at the time of loading or unloading, a fee of 2 cents per barrel, except that (A) bunker or fuel oil for the use of any vessel, and (B) oil which was transported through the trans-Alaska pipeline, shall not be subject to such collection. Such collections shall be delivered to the Fund at such times and in such manner as shall be prescribed by the Secretary. Such collections shall cease after the amount of money in the Fund has reached $100,000,000, unless there are adjudicated claims against the Fund yet to be satisifed. Collection shall be resumed when the Fund is reduced below $100,000,000. Whenever the money in the Fund is less than the claims for cleanup costs and damages for which it is liable under this section, the Fund shall borrow the balance required to pay such claims from the United States Treasury at an interest rate determined by the Secretary of the Treasury. Costs of administration shall be paid from the Fund only after appropriation in an appropriation bill. All sums not needed for administration and the satisfaction of claims shall be prudently invested in income-producing securities issued by the United States and approved by the Secretary of the Treasury. Income from such securities shall be applied to the principal of the Fund.

[(g) Liability shall not be imposed under subsection (d) or (e) of this section if the owner or operator of a vessel or the licensee can show that the discharge was caused solely by (1) an act of war, or (2) negligence on the part of the Federal Government in establishing and maintaining aids to navigation. In addition, liability with respect to damages claimed by a damaged party shall not be imposed under subsection (d), (e), or (f) of this section if the owner or operator of a vessel, the licensee, or the Fund can show that such damage was caused solely by the negligence of such party.]

[(h)(1) In any case where liability is imposed pursuant to subsection (d) of this section, if the discharge was the result of the negligence of the licensee, the owner or operator of a vessel held liable shall be subrogated to the rights of any person entitled to recovery against such licensee.

[(2) In any case where liability is imposed pursuant to subsection (e) of this section, if the discharge was the result of the unseaworthiness of a vessel or negligence of the owner or operator of such vessel, the licensee shall be subrogated to the rights of any person entitled to recovery against such owner or operator.

[(3) Payment of compensation for any damages pursuant to subsection (f)(2) of this section shall be subject to the Fund acquiring by subrogation all rights of the claimant to recover for such damages from any other person.

[(4) The liabilities established in this section shall in no way affect or limit any rights which the licensee, the owner, or operator of a vessel, or the Fund may have against any third party whose act may in any way have caused or contributed to a discharge of oil.

[(5) In any case where the owner or operator of a vessel or the licensee of a deepwater port from which oil is discharged acts to remove such oil in accordance with subsection (c)(1) of this section, such owner or operator or such licensee shall be entitled to recover from the Fund the reasonable cleanup cost incurred in such removal if he can show that such discharge was caused solely by (A) an act of war or (B) negligence on the part of the Federal Government in establishing and maintaining aids to navigation.

[(i)(1) The Attorney General may act on behalf of any group of damaged citizens he determines would be more adequately represented as a class in recovery of claims under this section. Sums recovered shall be distributed to the members of such group. If, within 90 days after a discharge of oil in violation of this section has occurred, the Attorney General fails to act in accordance with this paragraph, to sue on behalf of a group of persons who may be entitled to compensation pursuant to this section for damages caused by such discharge, any member of such group may maintain a class action to recover such damages on behalf of such group. Failure of the Attorney General to act in accordance with this subsection shall have no bearing on any class action maintained in accordance with this paragraph.

[(2) In any case where the number of members in the class exceed 1,000, publishing notice of the action in the Federal Register and in local newspapers serving the areas in which the damaged parties reside shall be deemed to fulfill the requirement for public notice established by rule 23(c)(2) of the Federal Rules of Civil Procedure.

[(3) The Secretary may act on behalf of the public as trustee of the natural resources of the marine environment to recover for damage to such resources in accordance with this section. Sums recovered shall be applied to the restoration and rehabilitation of such natural resources by the appropriate agencies of Federal or State government.

[(j)(1) The Secretary shall establish by regulation procedures for the filing and payment of claims for cleanup costs and damages pursuant to this Act.

[(2) No claims for payment of cleanup costs or damages which are filed with the Secretary more than 3 years after the date of the discharge giving rise to such claims shall be considered.

[(3) Appeals from any final determination of the Secretary pursuant to this section shall be filed not later than 30 days after such determination in the United States Court of Appeals of the circuit within which the nearest adjacent coastal State is located.]

[(k)(1) This section shall not be interpreted to preempt the field of liability or to preclude any State from imposing additional requirements or liability for any discharge of oil from a deepwater port or vessel within any safety zone.

[(2) Any person who receives compensation for damages pursuant to this section shall be precluded from recovering compensation for the same damages pursuant to any other State or Federal law. Any person who receives compensation for damages pursuant to any other Federal or State law shall be precluded from receiving compensation for the same damages as provided in this section.]

(c) This section shall not be interpreted to preclude any State from imposing additional requirements, not inconsistent with the provisions of the Comprehensive Oil Pollution Liability and Compensation Act, for any discharge of oil from a deepwater port or a vessel within any safety zone.

[(l) the Secretary shall require that any owner or operator of vessel using any deepwater port, or any licensee of a deepwater port shall carry insurance or give evidence of other financial responsibility in an amount sufficient to meet the liabilities imposed by this section.]

[(m)] *(d)* As used in this section the term—

(1) "cleanup costs" means all actual costs, including but not limited to costs of the Federal Government, of any state or local government, of other nations or of their contractors or subcontractors incurred in the (A) removing or attempting to remove or (B) taking other measures to reduce or mitigate damages from any oil discharged into the marine environment in violation of subsection (a)(1) of this section;

(2) "damages" means all damages (except cleanup costs) suffered by any person, or involving real or personal property, the natural resources of the marine environment, or the coastal environment of any nation, including damages claimed without regard to ownership of any affected lands, structures, fish, wildlife, or biotic or natural resources;

(3) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping into the marine environment of quantities of oil determined to be harmful pursuant to regulations issued by the Administrator of the Environmental Protection Agency; and

(4) "owner or operator" means any person owning, operating, or chartering by demise, a vessel.

[(n)(1) The Attorney General, in cooperation with the Secretary, the Secretary of State, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, the Council on Environmental Quality, and the Administrative Conference of the United States, is authorized and directed to study methods and procedures for implementing a uniform law providing liability for cleanup costs and damages from oil spills from Outer Continental Shelf operations, deepwater ports, vessels, and other ocean-related sources. The study shall give particualr attention to methods of adjudicating and settling claims as rapidly, economically, and equitably as possible.

[(2) The Attorney General shall report the results of his study together with any legislative recommendations to the Congress within 6 months after the date of enactment of this Act.]

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OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978

[TITLE III—OFFSHORE OIL SPILL POLLUTION FUND

[DEFINITIONS

[SEC. 301. For the purposes of this title, the term—

[(1) "Secretary" means the Secretary of Transportation;

[(2) "Fund" means the Offshore Oil Pollution Compensation Fund established under section 302 of this title;

[(3) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or governmental entity;

[(4) "incident" means any occurrence or series of related occurrences, involving one or more offshore facilities or vessels, or any combination thereof, which causes or poses an imminent threat of oil pollution;

[(5) "vessel" means every description of watercraft or other contrivance, whether or not self-propelled, which is operating in the waters above the Outer Continental Shelf (as the term "outer Continental Shelf" is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)), or which is operating in the waters above submerged lands seaward from the coastline of a State (as the term "submerged lands" is described in section 2(a) of the Submerged Lands Act (43 U.S.C. 1301(a)(2))), and which is transporting oil directly from an offshore facility;

[(6) "public vessel" means a vessel which—

[(A) is owned or chartered by demise, and operated by (i) the United States, (ii) a State or political subdivision thereof, or (iii) a foreign government; and

[(B) is not engaged in commercial service;

[(7) "facility" means a structure, or group of structures (other than a vessel or vessels), used for the purpose of transporting, drilling for, producing, processing, storing, transferring, or otherwise handling oil;

[(8) "offshore facility" includes any oil refinery, drilling structure, oil storage or transfer terminal, or pipeline, or any appurtenance related to any of the foregoing, which is used to drill for, produce, store, handle, transfer, process, or transport oil produced from the Outer Continental Shelf (as the term "outer Continental Shelf" is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a))), and is located on the Outer Continental Shelf, except that such term does not include (A) a vessel, or (B) a deepwater port (as the term "deepwater port" is defined in section 3(10) of the Deepwater Port Act of 1974 (33 U.S.C. 1502));

[(9) "oil pollution" means—

[(A) the presence of oil either in an unlawful quantity or which has been discharged at an unlawful rate (i) in or on the waters above submerged lands seaward from the coastline of a State (as the term "submerged lands" is described in section 2(a)(2) of the Submerged Lands Act (43 U.S.C. 1301(a)(2))), or on the adjacent shoreline of such a State, or (ii) on the waters of the contiguous zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606); or

[(B) the presence of oil in or on the waters of the high seas outside the territorial limits of the United States—

[(i) when discharged in connection with activities conducted under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.); or [(ii) causing injury to or loss of natural resources belonging to, appertaining to, or under the exclusive management authority of, the United State; or

[(C) the presence of oil in or on the territorial sea, navigable or internal waters, or adjacent shoreline of a foreing country, in a case where damages are recoverable by a foreign claimant under this title;

[(10) "United States claimant" means any person residing in the United States, the Government of the United States or an agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim under this title;

[(11) "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof, who asserts a claim under this title;

[(12) "United States" includes and "State" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession over which the United States has jurisdiction;

[(13) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

[(14) "cleanup costs" means costs of reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from such incident;

[(15) "damages" means compensation sought pursuant to this title by any person suffering any direct and actual injury proximately caused by the discharge of oil from an offshore facility or vessel, except that such term does not include cleanup costs;

[(16) "person in charge" means the individual immediately responsible for the operation of a vessel or offshore facility;

[(17) "claim" means a demand in writing for a sum certain;

[(18) "discharge" means any emission, intentional or unintentional, and includes spilling, leaking, pumping, pouring, emptying, or dumping;

[(19) "owner" means any person holding title to, or in the absence of title, any other indicia of ownership of, a vessel or offshore facility, whether by lease, permit, contract, license, or other form of agreement, or with respect to any offshore facility abandoned without prior approval of the Secretary of the Interior, the person who owned such offshore facility immediately prior to such abandonment, except that such term does not include a person who, without participating in the management or operation of a vessel or offshore facility, holds indicia of ownership primarily to protect his security interest in the vessel or offshore facility;

[(20) "operator" means—

[(A) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel; or

[(B) in the case of an offshore facility, any person, except the owner, who is responsible for the operation of such facility by agreement with the owner;

[(21) "property" means littoral, riparian, or marine property;

[(22) "removal costs" means—

[(A) costs incurred under subsection (c), (d), or (l) of section 311 of the Federal Water Pollution Control Act, and section 5 of the Intervention on the High Seas Act; and

[(B) cleanup costs, other than the costs described in subparagraph (A);

[(23) "guarantor" means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator;

[(24) "gross ton" means a unit of 100 cubic feet for the purpose of measuring the total unit capacity of a vessel; and

[(25) "barrel" means 42 United States gallons at 60 degrees Fahrenheit.

[FUND ESTABLISHMENT, ADMINISTRATION, AND FINANCING

[SEC. 302. (a) There is hereby established in the Treasury of the United States on Offshore Oil Pollution Compensation Fund in an amount not to exceed $200,000,000, except that such limitation shall be increased to the extent necessary to permit any moneys recovered or collected which are referred to in subsection (b)(2) of this section to be paid into the Fund. The Fund shall be administered by the Secretary and the Secretary of the Treasury as specified in this title. The Fund may sue and be sued in its own name.

[(b) The Fund shall be composed of—

[(1) all fees collected pursuant to subsection (d) of this section; and

[(2) all other moneys recovered or collected on behalf of the Fund under section 308 or any other provision of this title.

[(c) The Fund shall be immediately available for—

[(1) removal costs described in section 301(22);

[(2) the processing and settlement of claims under section 307 of this title (including the costs of assessing injury to, or destruction of, natural resources); and

[(3) subject to such amounts as are provided in appropriation Acts, all administrative and personnel costs of the Federal Government incident to the administration of this title, including, but not limited to, the claims settlement activities and adjudicatory and judicial proceedings, whether or not such costs are recoverable under section 308 of this title.

The Secretary is authorized to promulgate regulations designating the person or persons who may obligate available moneys in the Fund for such purposes.

[(d)(1) The Secretary shall levy and the Secretary of the Treasury shall collect a fee of not to exceed 3 cents per barrel on oil obtained from the Outer Continental Shelf, which shall be imposed on the owner of the oil when such oil is produced.

[(2) The Secretary of the Treasury, after consulting with the Secretary, may promulgate reasonable regulations relating to the collection of the fees authorized by paragraph (1) of this subsection and, from time to time, the modification thereof. Any modification shall become effective on the date specified in the regulation making such modification, but no earlier than the ninetieth day following the date such regulation is published in the Federal Register. Any modification of the fee shall be designed to insure that the Fund is maintained at a level of not less than $100,000,000 and not more than $200,000,000. No regulation that sets or modifies fees, whether or not in effect, may be stayed by any court pending completion of judicial review of such regulation.

[(3)(A) Any person who fails to collect or pay any fee as required by any regulation promulgated under paragraph (2) of this subsection shall be liable for a civil penalty not to exceed $10,000, to be assessed by the Secretary of the Treasury, in addition to the fee required to be collected or paid and the interest on such fee at the rate such fee would have earned if collected or paid when due and invested in special obligations of the United States in accordance with subsection (e)(2) of this section. Upon the failure of any person so liable to pay any penalty, fee, or interest upon demand, the Attorney General may, at the request of the Secretary of the Treasury, bring an action in the name of the Fund against that person for such amount.

[(B) Any person who falsifies records or documents required to be maintained under any regulation promulgated under this subsection shall be subject to prosecution for a violation of section 1001 of title 18, United States Code.

[(4) The Secretary of the Treasury may, by regulation, designate the reasonably necessary records and documents to be kept by persons from whom fees are to be collected pursuant to paragraph (1) of this subsection, and the Secretary of the Treasury and the Comptroller General of the United States shall have access to such records and documents for the purpose of audit and examination.

[(e)(1) The Secretary shall determine the level of funding required for immediate access in order to meet potential obligations of the Fund.

[(2) The Secretary of the Treasury may invest any excess in the Fund, above the level determined under paragraph (1) of this subsection, in interest-bearing special obligations of the United States. Such special obligations may be redeemed at any time in accordance with the terms of the special issue and pursuant to regulations promulgated by the Secretary of the Treasury. The interest on, and the proceeds from the sale of, any obligations held in the Fund shall be deposited in and credited to the Fund.

[(f) If at any time the moneys available in the Fund are insufficient to meet the obligations of the Fund, the Secretary shall issue to the Secretary of the Treasury notes or other obligations in the forms and denominations, bearing the interest rates and maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of such notes or other obligations shall be made by the Secretary from moneys in the Fund. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of comparable maturity. The Secretary of the Treasury shall purchase any notes or other obligations issued under this subsection and, for that purpose, he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purpose for which securities may be issued under that Act are extended to include any purchase of such notes or other obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

[DAMAGES AND CLAIMANTS

[SEC. 303. (a) Claims for economic loss, arising out of or directly resulting from oil pollution, may be asserted for—

[(1) removal costs; and

[(2) damages, including—

[(A) injury to, or destruction of, real or personal property;

[(B) loss of use of real or personal property;

[(C) injury to, or destruction of, natural resources;

[(D) loss of use of natural resources;

[(E) loss of profits or impairment of earning capacity due to injury to, or destruction of, real or personal property or natural resources; and

[(F) loss of tax revenue for a period of one year due to injury to real or personal property.

[(b) A claim authorized by subsection (a) of this section may be asserted—

[(1) under paragraph (1), by any claimant, except that the owner or operator of a vessel or offshore facility involved in an incident may assert such a claim only if he can show—

[(A) that he is entitled to a defense to liability under section 304(c)(1) or 304(c)(2) of this title; or

[(B) if not entitled to such a defense to liabiity, that he is entitled to a limitation of liability under section 304(b), except that if he is not entitled to such a defense to liability but is entitled to such a limitation of liability, such claim may be asserted only as to the removal costs incurred in excess of that limitation;

[(2) under paragraphs (2) (A), (B), and (D), by any United States claimant if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant;

[(3) under paragraph (2)(C), by the President, as trustees for natural resources over which the Federal Government has sovereign rights or exercises exclusive management authority, or by any State for natural resources within the boundary of the State belonging to, managed by, controlled by, or appertaining to the State, and sums recovered under paragraph (2)(C) shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources;

[(4) under paragraph (2)(E), by any United States claimant if the claimant derives at least 25 per centum of his earnings from activities which utilize the property or natural resource;

[(5) under paragraph (2)(F), by the Federal Government and any Sate or political subdivision thereof;

[(6) under paragraphs (2) (A) through (E), by a foreign claimant to the same extent that a United States claimant may assert a claim if—

[(A) the oil pollution occurred in or on the territorial sea, navigable waters or internal waters, or adjacent shoreline of a foreign country of which the claimant is a resident;

[(B) the claimant is not otherwise compensated for his loss;

[(C) the oil was discharged from an offshore facility or from a vessel in connection with activities conducted under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.); and

[(D) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants;

[(7) under paragraph (1) or (2), by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this subsection, when he determines that the claimants would be more adequately represented as a class in asserting their claims.

[(c) If the Attorney General fails to take action under paragraph (7) of subsection (b) within sixty days of the date on which the Secretary designates a source under section 306 of this title, any member of a group described in such paragraph may maintain a class action to recover damages on behalf of that group. Failure of the Attorney General to take action shall have no bearing on any class action maintained by any claimant for damages authorized by this section.

[LIABILITY

[SEC. 304. (a) Subject to the provisions of subsections (b) and (c) of this section, the owner and operator of a vessel other than a public vessel, or of an offshore facility, which is the source of oil pollution, or poses a threat of oil pollution in circumstances which justify the incurrence of the type of costs described in section 301(22) of this title, shall be jointly, severally, and strictly liable for all loss for which a claim may be asserted under section 303 of this title.

[(b) Except when the incident is caused primarily by willful misconduct or gross negligence, within the privity or knowledge of the owner or operator, or is caused primarily by a violation, within the privity or knowledge of the owner or operator, of applicable safety, construction, or operating standards or regulations of the Federal Government, the total of the liability under subsection (a) of this section incurred by, or on behalf of, the owner or operator shall be—

[(1) in the case of a vessel, limited to $250,000 or $300 per gross ton, whichever is greater, except when the owner or operator of a vessel fails or refuses to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities; or

[(2) in the case of an offshore facility, the total of removal and cleanup costs, and an amount limited to $35,000,000 for all damages.

[(c) There shall be no liability under subsection (a) of this section—

[(1) if the incident is caused solely by any act of war, hostilities, civil war, or insurrection, or by an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistable character, the effect of which could not have been prevented or avoided by the exercise of due care or foresight; or

[(2) if the incident is caused solely by the negligent or intentional act of the damaged party or any third party (including any government entity).

[(d) Notwithstanding the limitations, exceptions, or defenses of subsection (b) or (c) of this section, all costs of removal incurred by the Federal Government or any State or local official or agency in connection with a discharge of oil from any offshore facility or vessel shall be borne by the owner and operator of the offshore facility or vessel from which the discharge occurred.

[(e) The Secretary shall, from time to time, report to Congress on the desirability of adjusting the monetary limitation of liability specified in subsection (b) of this section.

[(f)(1) Subject to the provisions of paragraph (2) of this subsection, the Fund shall be liable, without any limitation, for all losses for which a claim may be asserted under section 303 of this title, to the extent that such losses are otherwise compensated.

[(2) Except for the removal costs specified in section 301(22), there shall be no liability under paragraph (1) of this subsection—

[(A) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

[(B) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

[(g)(1) In addition to the losses for which claims may be asserted under section 303 of this title, and without regard to the limitation of liability provided in subsection (b) of this section, the owner, operator, or guarantor of an offshore facility or vessel shall be liable to the claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim is presented to such person to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which such owner, operator, or guarantor offers the claimant an amount equal to or greater than the amount finally paid in satisfaction of the claim to the date upon which the claimant accepts such amount, inclusive. However, if such owner, operator, or guarantor offers the claimant, within sixty days of the date upon which the claim is presented, or of the date upon which advertising is commenced pursuant to section 306 of this title, whichever is later, an amount equal to or greater than the amount finally paid in satisfaction of the claim, the owner, operator, or guarantor shall be liable for the interest provided in this paragraph only from the date the offer is accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

[(2) The interest provided in paragraph (1) of this subsection shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

[(h) Nothing in this title shall bar a cause of action that an owner or operator, subject to liability under subsection (a) of this section, or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

[(i) To the extent that they are in conflict or otherwise inconsistent with any other provision of law relating to liability or the limitation thereof, the provisions of this section shall supersede such other provision of law, including section 4283(a) of the Revised Statutes (46 U.S.C. 183(a)).

[FINANCIAL RESPONSIBILITY

[SEC. 305. (a)(1) The owner of operator of any vessel (except a non-self-propelled barge that does not carry oil as fuel or cargo) which uses an offshore facility shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of such vessel would be exposed in a case where he would be entitled to limit his liability in accordance with the provisions of section 304(b) of this title. Financial responsibility may be established by any one, or any combination, of the following methods, acceptable to the President: evidence of insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In any case where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

[(2) The Secretary, in accordance with regulations promulgated by him, shall—

[(A) deny entry to any port or place in the United States or to the navigable waters to; and

[(B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection which, upon request, does not produce certification furnished by the President that such vessel is in compliance with the financial responsibility provisions of paragraph (1) of this subsection.

[(3) The Secretary, in accordance with regulations promulgated by him, shall have access to all offshore facilities and vessels conducting activities under the Outer Continental Shelf Lands Act, and such facilities and vessels shall, upon request, show certification of financial responsibility.

[(b) The owner or operator of an offshore facility which (1) is used for drilling for, producing, or processing oil, or (2) has the capacity to transport, store, transfer, or otherwise handle more than one thousand barrels of oil at any one time, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of such facility would be exposed in a case where he would be entitled to limit his liability in accordance with the provisions of section 304(b) of this title, or $35,000,000, whichever is less.

[(c) Any claim authorized by section 303(a) may be asserted directly against any guarantor providing evidence of financial responsibility for any owner or operator of an offshore facility or vessel as required under this section. In defending such claim, the guarantor shall be entitled to invoke all rights and defenses which would be available to such owner or operator under this title. Such guarantor shall also be entitled to invoke the defense that the incident was caused by the willful misconduct of such owner or operator, but shall not be entitled to invoke any other defense which such guarantor might be entitled to invoke in proceedings brought by such owner or operator against such guarantor.

[(d) The President shall conduct a study to determine—

[(1) whether adequate private oil pollution insurance protection is available on reasonable terms and conditions to the owners and operators of vessels, onshore facilities, and offshore facilities; and

[(2) whether the market for such insurance is sufficiently competitive to assure purchasers of features such as a reasonable range of deductibles, coinsurance provisions, and exclusions.

The President shall submit the results of his study, together with the recommendation, within one year after the date of enactment of this title, and shall submit an interim report on his study within three months after such date of enactment.

[NOTIFICATION, DESIGNATION, AND ADVERTISEMENT

[SEC. 306. (a) The person in charge of a vessel or offshore facility which is involved in an incident shall immediately notify the Secretary of the incident as soon as he has knowledge thereof. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against such person or his employer in any criminal case, other than a case involving prosecution for perjury or for giving a false statement.

[(b)(1) When the Secretary receives information pursuant to subsection (a) of this section or otherwise of an incident which involves oil pollution, the Secretary shall, where possible, designate the source or sources of the oil pollution and shall immediately notify the owner and operator of such source and the guarantor of such designation.

[(2) When a source designated under paragraph (1) of this subsection is a vessel or offshore facility and the owner, operator, or guarantor fails to inform the Secretary, within five days after receiving notification of the designation, of his denial of such designation, such owner, operator, or guarantor, as required by regulations promulgated by the Secretary, shall advertise the designation and the procedures by which claims may be presented to him. If advertisement is not made in accordance with this paragraph, the Secretary shall, as he finds necessary, and at the expense of the owner, operator, or guarantor involved, advertise the designation and the procedures by which claims may be presented to such owner, operator, or guarantor.

[(c) In a case where—

[(1) the owner, operator, and guarantor all deny a designation in accordance with paragraph (2) of subsection (b) of this section;

[(2) the source of the discharge was a public vessel; or

[(3) the Secretary is unable to designate the source or sources of the discharge under paragraph (1) of such subsection (b),

the Secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the Fund.

[(d) Advertisement under subsection (b) of this section shall commence no later than fifteen days after the date of the designation made under such subsection and shall continue for a period of no less than thirty days.

[CLAIMS SETTLEMENT

[SEC. 307. (a) Except as provided in subsection (b) of this section, all claims shall be presented to the owner, operator, or guarantor.

[(b) All claims shall be presented to the Fund—

[(1) where the Secretary has advertised or otherwise notified claimants in accordance with section 306(c) of this title; or

[(2) where the owner or operator may recover under the provisions of section 303(b)(1) of this title.

(c) In the case of a claim presented in accordance with subsection (a) of this section, and in which—

[(1) the person to whom the claim is presented denies all liability for the claim, for any reason; or

[(2) the claim is not settled by any person by payment to the claimant within sixty days from the date upon which (A) the claim is presented, or (B) advertising is commenced pursuant to section 306(b)(2), whichever is later,

the claimant may elect to commence an action in court against the owner, operator, or guarantor, or to present the claim to the Fund, that election to be irrevocable and exclusive.

[(d) In the case of a claim presented in accordance with subsection (a) of this section, where full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 304(b) of this title or because the owner, operator, and guarantor to whom the claim is presented are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the Fund.

[(e) In the case of a claim which is presented to any person, pursuant to subsection (a) of this section, and which is being presented to the Fund, pursuant to subsection (c) or (d) of this section, such person, at the request of the claimant, shall transmit the claim and supporting documents to the Fund. The Secretary may, by regulation, prescribe the documents to be transmitted and the terms under which they are to be transmitted.

[(f) In the case of a claim presented to the Fund, pursuant to subsection (b), (c), or (d) of this section, and in which the Fund—

[(1) denies all liability for the claim, for any reason; or

[(2) does not settle the claim by payment to the claimant within sixty days after the date upon which (A) the claim is presented to the Fund, or (B) advertising is commenced pursuant to section 306(c) of this title, whichever is later,

the claimant may submit the dispute to the Secretary for decision in accordance with section 554 of title 5, United States Code. However, a claimant who has presented a claim to the Fund pursuant to such subsection (b) may elect to commence an action in court against the Fund in lieu of submission of the dispute to the Secretary for decision, that election to be irrevocable and exclusive.

[(g)(1) The Secretary shall promulgate regulations which establish uniform procedures and standards for the appraisal and settlement of claims against the Fund.

[(2) Except as provided in paragraph (3) of this subsection, the Secretary shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the Fund and may contract to pay compensation for those facilities and services. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5) upon a showing by the Secretary that advertising is not reasonably practicable. The Secretary may make advance payments to a contractor for services and facilities, and the Secretary may advance to the contractor funds to be used for the payment of claims. The Secretary may review and audit claim payments made pursuant to this subsection. A payment to a claimant for a single claim in excess of $100,000, or two or more claims aggregating in excess of $200,000, shall be first approved by the Secretary. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted by or on behalf of such State or any of its agencies or subdivisions unless the payment has been approved by the Secretary.

[(3) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the Secretary may use Federal personnel to process claims against the Fund.

[(h) Notwithstanding subsection (b) of section 556 of title 5, United States Code, the Secretary is authorized to appoint, from time to time for a period of not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes submitted to the Secretary pursuant to subsection (f) of this section. At least one member of each panel shall be qualified to conduct adjudicatory proceedings and shall preside over the activities of the panel. Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may be appointed from private life or from any Federal agency except the staff administering the Fund. Each panel member appointed from private life shall receive a per diem compensation, and each panel member shall receive necessary traveling and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special Government employees, shall apply to panel members appointed from private life.

[(i)(1) Upon receipt of a request for a decision from a claimant, properly made, the Secretary shall refer the dispute to (A) an administrative law judge appointed under section 3105 of title 5, United States Code, or (B) a panel appointed under subsection (h) of this section.

[(2) The administrative law judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States judicial circuit within which the damage complained of occurred within two or more circuits, of any of the affected circuits, or, if the damage occurred outside any circuit, of the nearest circuit.

[(3) Upon receipt of a dispute, the administrative law judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code. In any proceeding subject to this subsection, the presiding officer may require by subpena any person to appear and testify or to appear and produce books, papers, documents, or tangible things at a hearing or deposition at any designated place. Subpenas shall be issued and enforced in accordance with procedures in subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the Secretary. If a person fails or refuses to obey a subpena, the Secretary may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and production by him of books, papers, documents, or any tangible things.

[(4) A hearing conducted under this subsection shall be conducted within the United States judicial district within which, or nearest to which, the damage complained of occurred, or, if the damage complained of occurred within two or more districts, in any of the affected districts, or if the damage occurred outside any district, in the nearest district.

[(5) The decision of the administrative law judge or panel under this subsection shall be the final order of the Secretary, except that the Secretary, in his discretion and in accordance with regulations which he may promulgate, may review the decision upon his own initiative or upon exception of the claimant or the Fund.

[(6) Final orders of the Secretary made under this subsection shall be reviewable pursuant to section 702 of title 5, United States Code,in the district courts of the United States.

[(j) (1) In any action brought pursuant to this title against an owner, operator, or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the Fund at the same time such pleadings are served upon the opposing parties.

[(2) The Fund may intervene in any action described in paragraph (1) of this subsection as a matter of right.

[(3) In any action described in paragraph (1) of this subsection to which the Fund is a party, if the owner, operator, or guarantor admits liability under this title, the Fund upon its motion shall be dismissed therefrom to the extent of the admitted liability.

[(4) If the Fund receives from either the plaintiff or the defendant notice of an action described in paragraph (1) of this subsection, the Fund shall be bound by any judgment entered therein, whether or not the Fund was a party to the action.

[(5) If neither the plaintiff nor the defendant gives notice of an action described in paragraph (1) of this subsection to the Fund, the limitation of liability otherwise permitted by section 304(b) of this title shall not be available to the defendant, and the plaintiff shall not recover from the Fund any sums not paid by the defendant.

[(k) In any action brought against the Fund under this title, the plaintiff may join any owner, operator, or guarantor, and the Fund may join any person who is or may be liable to the Fund under any provision of this title.

[(1) No claim may be presented, nor may an action be commenced for economic losses recoverable under this title, unless such claim is presented to, or such action is commenced against, the owner, operator, or guarantor, or the Fund, as to their respective liabilities, within three years after the date of discovery of the economic loss for which a claim may be asserted under section 303(a) of this title, or within six years of the date of the incident which resulted in such loss, whichever is earlier.

[SUBROGATION

[SEC. 308. (a) Any person or governmental entity, including the Fund, who pays compensation to any claimant for an economic loss, compensable under section 303 of this title, shall be subrogated to all rights, claims, and causes of action which such claimant has under this title.

[(b) Upon request of the Secretary, the Attorney General may commence an action, on behalf of the Fund, for the compensation paid by the Fund to any claimant pursuant to this title. Such an action may be commenced against any owner, operator, or guarantor, or against any other person or governmental entity, who is liable, pursuant to any law, to the compensated claimant or to the Fund, for economic losses for which the compensation was paid.

[(c) In any claim or action by the Fund against any owner, operator, or guarantor, pursuant to the provisions of subsection (a) or (b), the Fund shall recover—

[(1) for a claim presented to the Fund (where there has been a denial of source designation) pursuant to section 307(b)(1) of this title, or (where there has been a denial of liability) pursuant to section 307(c)(1) of this title—

[(A) subject only to the limitation of liability to which the defendant is entitled under section 304(b) of this title, the amount the Fund has paid to the claimant, without reduction;

[(B) interest on such amount, at the rate calculated in accordance with section 304(g)(2) of this title, from the date upon which the claim is presented by the claimant to the defendant to the date upon which the Fund is paid by the defendant, inclusive, less the period, if any, from the date upon which the Fund offers to the claimant the amount finally paid by the Fund to the claimant in satisfaction of the claim against the Fund to the date upon which the claimant accepts that offer, inclusive; and

[(C) all costs incurred by the Fund by reason of the claim, both of the claimant against the Fund and the Fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; and

[(2) for a claim presented to the Fund pursuant to section 307 (c)(2) of this title—

[(A) in which the amount the Fund has paid to the claimant exceeds the largest amount, if any, the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

[(i) subject to dispute by the defendant as to any excess over the amount offered to the claimant by the defendant, the amount the Fund has paid to the claimant;

[(ii) interest, at the rate calculated in accordance with section 304(g)(2) of this title, for the period specified in paragraph (1)(B) of this subsection; and

[(iii) all costs incurred by the Fund by reason of the claim of the Fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; or

[(B) in which the amount the Fund has paid to the claimant is less than or equal to the largest amount the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

[(i) the amount which the Fund has paid to the claimant, without reduction;

[(ii) interest, at the rate calculated in accordance with section 304(g)(2) of this title, from the date upon which the claim is presented by the claimant to the defendant to the date upon which the defendant offered to the claimant the largest amount referred to in this subparagraph, except that if the defendant tenders the offer of the largest amount referred to in this subparagraph within sixty days after the date upon which the claim of the claimant is either presented to the defendant or advertising is commenced pursuant to section 306 of this title, the defendant shall not be liable for interest for that period; and

[(iii) interest from the date upon which the claim of the Fund against the defendant is presented to the defendant to the date upon which the Fund is paid, inclusive, less the period, if any, from the date upon which the defendant offers to the Fund the amount finally paid to the Fund in satisfaction of the claim of the Fund to the date upon which the Fund accepts that offer, inclusive.

[(d) The Fund shall pay over to the claimant that portion of any interest the Fund recovers, pursuant to subsection (c)(1) and (2)(A), for the period from the date upon which the claim of the claimant is presented to the defendant to the date upon which the claimant is paid by the Fund, inclusive, less the period from the date upon which the Fund offers to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant accepts such offer, inclusive.

[(e) The Fund is entitled to recover for all interest and costs specified in subsection (c) of this section without regard to any limitation of liability to which the defendant may otherwise be entitled under this title.

[JURISDICTION AND VENUE

[SEC. 309. (a) The United States district courts shall have original and exclusive jurisdiction of all controversies arising under this title, without regard to the citizenship of the parties or the amount in controversy.

[(b) Venue shall lie in any district wherein the injury complained of occurred, or wherein the defendant resides, may be found, or has his principal office. For the purposes of this section, the Fund shall reside in the District of Columbia.

[RELATIONSHIP TO OTHER LAW

[SEC. 310. (a) Any person who receives compensation for damages or removal costs pursuant to this title shall be precluded from recovering compensation for the same damages or removal costs pursuant to any other State or Federal law. Any person who receives compensation for damages or removal costs pursuant to any other State or Federal law shall be precluded from receiving compensation for the same damages or removal costs under this title.

[(b) No owner or operator of an offshore facility or vessel who establishes and maintains evidence of financial responsibility in accordance with this section shall be required under any State law, rule, or regulation to establish any other evidence of financial responsibility in connection with liability for the discharge of oil from such offshore facility or vessel. Evidence of compliance with the financial responsibility requirement of this section shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the discharge of oil from such offshore facility or vessel.

⟦(c) Except as otherwise provided in this title, this title shall not be interpreted to preempt the field of liability or to preclude any State from imposing additional requirements or liability for any discharge of oil resulting in damages or removal costs within the jurisdiction of such State.

⟦PROHIBITION

⟦SEC. 311. The discharge of oil from any offshore facility or vessel, in quantities which the President under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)) determines to be harmful, is prohibited.

⟦PENALTIES

⟦SEC. 312.(a)(1) Any person who fails to comply with the requirements of section 305 of this title, the regulations promulgated thereunder, or any denial or detention order, shall be subject to a civil penalty of not to exceed $10,000.

⟦(2) The civil penalty described in paragraph (1) of this subsection may be assessed and compromised by the President or his designee, in connection with section 305(a)(1) of this title, and by the Secretary, in connection with section 305(a)(3) and section 305(b) of this title. No penalty shall be assessed until notice and an opportunity for hearing on the alleged violation have been given. In determining the amount of the penalty or the amount agreed upon in compromise, the demonstrated good faith of the party shall be taken into consideration.

⟦(3) At the request of the official assessing a penalty under this subsection, the Attorney General may bring an action in the name of the Fund to collect the penalty assessed.

⟦(b) Any person in charge who is subject to the jurisdiction of the United States and who fails to give the notification required by section 306(a) of this title shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than one year, or both.

⟦AUTHORIZATION OF APPROPRIATIONS

⟦SEC. 313. (a) There is authorized to be appropriated for the administration of this title $10,000,000 for the fiscal year ending September 30, 1979, $5,000,000 for the fiscal year ending September 30, 1980, and $5,000,000 for the fiscal year ending September 30, 1981.

⟦(b) There are also authorized to be appropriated to the Fund from time to time, such amounts as may be necessary to carry out the purposes of the applicable provisions of this title, including the entering into contracts, any disbursements of funds, and the issuance of notes or other obligations pursuant to section 302(f) of this title.

⟦(c) Notwithstanding any other provision of this title, the authority to make contracts, to make disbursements, to issue notes or other obligations pursuant to section 302(f) of this title, to charge and collect fees pursuant to section 302(d) of this title, or to exercise any other spending authority shall be effective only to the extent provided, without fiscal year limitation, in appropriation Acts enacted after the date of enactment of this title.

[ANNUAL REPORT

[SEC. 314. Within six months after the end of each fiscal year, the Secretary shall submit to the Congress (1) a report on the administration of the Fund during such fiscal year, and (2) his recommendations for such legislative changes as he finds necessary or appropriate to improve the management of the Fund and the administration of the liability provisions of this title.

[EFFECTIVE DATES.

[SEC. 315. (a) This section, subsection (e) of section 304, subsection (d) of section 305, and all provisions of this title authorizing the delegation of authority or the promulgation of regulations shall be effective on the date of enactment of this title.

[(b) All other provisions of this title, and rules and regulations promulgated pursuant to such provisions, shall be effective on the one hundred and eightieth day after the date of enactment of this title.]

INTERNAL REVENUE CODE OF 1954

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Subtitle D—Miscellaneous Excise Taxes

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CHAPTER 38—ENVIRONMENTAL TAXES

*   *   *   *   *   *   *

Subchapter A—Tax on Petroleum

*   *   *   *   *   *   *

SEC. 4611. IMPOSITION OF TAX.

(a) GENERAL RULE.—There is hereby imposed a tax [of 0.79 cent a barrel] *at the rate specified in subsection (c)* on—

(1) crude oil received at a United States refinery, and

(2) petroleum products entered into the United States for consumption, use, or warehousing.

(b) TAX ON CERTAIN USES AND EXPORTATION.—

(1) IN GENERAL.—If—

(A) any dometic crude oil is used in or exported from the United States, and

(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a),

then a tax [of 0.79 cent a barrel] *at the rate specified in subsection (c)* is hereby imposed on such crude oil.

(2) EXCEPTION FOR USE ON PREMISES WHERE PRODUCED.—Paragraph (1) shall not apply to any use of crude oil for extracting

oil or natural gas on the premises where such crude oil was produced.

* * * * * * *

(c) Rate of Tax.—

(1) In general.—The rate of the taxes imposed by this section is the sum of—

(A) the Superfund financing rate, and

(B) the Oil Spill Liability Trust Fund financing rate.

(2) Rates.—For purposes of paragraph (1)—

(A) the Superfund financing rate is 0.79 cent a barrel, and

(B) the Oil Spill Liability Trust Fund financing rate is 1.3 cents a barrel.

[(c)**]** *(d)* Persons Liable for Tax.—

(1) Crude oil received at refinery.—The tax imposed by subsection (a)(1) shall be paid by the operator of the United States refinery.

(2) Imported petroleum product.—The tax imposed by subsection (a)(2) shall be paid by the person entering the product for consumption, use, or warehousing.

(3) Tax on certain uses or exports.—The tax imposed by subsection (b) shall be paid by the person using or exporting the crude oil, as the case may be.

[(d) Termination.—The taxes imposed by this section shall not apply after September 30, 1985, except that if on September 30, 1983, or September 30, 1984—

[(1) the unobligated balance in the Hazardous Substance Response Trust Fund as of such date exceeds $900,000,000, and

[(2) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that such unobligated balance will exceed $500,000,000 on September 30 of the following year if no tax is imposed under section 4611 or 4661 during the calendar year following the date referred to above.

then no tax shall be imposed by this section during the first calendar year beginning after the date referred to in paragraph (1).**]**

(e) Application of Taxes.—

(1) Superfund rate.—The Superfund financing rate under subsection (c) shall not apply after September 30, 1985.

(2) Oil spill rate.—The Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply after September 30, 1985, and before October 1, 1990.

* * * * * * *

SEC. 4612. DEFINITIONS AND SPECIAL RULES.

(a) * * *

* * * * * * *

(c) Credit Against Portion of Tax Attributable to Oil Spill Rate.—There shall be allowed as a credit against so much of the tax imposed by section 4611 as is attributable to the Oil Spill Liability Trust Fund financing rate under section 4611(c) for any

period an amount equal to the excess of the aggregate amount paid by the taxpayer into the Deepwater Port Liability Trust Fund and the Offshore Oil Pollution Compensation Fund over the amount of such payments taken into account under this subsection for all prior periods.

[(c)**]** *(d)* DISPOSITION OF REVENUE FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4611.

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Subchapter B—Tax on Certain Chemicals

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SEC. 4661. IMPOSITION OF TAX.

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(c) TERMINATION.—No tax shall be imposed under this section during any period during which no tax is imposed under section 4611(a)**[**.**]** *that is attributable to the Superfund financing rate under section 4611(c).*

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Subtitle I—Trust Fund Code

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CHAPTER 98—TRUST FUND CODE

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Subchapter A—Establishment of Trust Funds

Sec. 9501. Black Lung Disability Trust Fund.

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Sec. 9505. Oil Spill Liability Trust Fund.

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SEC. 9505. OIL SPILL LIABILITY TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Oil Spill Liability Trust Fund", consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Oil Spill Liability Trust Fund amounts equivalent to—

(1) taxes received in the Treasury under section 4611 (relating to environmental tax on petroleum) to the extent attributable to the Oil Spill Liability Trust Fund financing rate under section 4611(c),

(2) amounts recovered, collected, or received under part 1 of the Comprehensive Oil Pollution Liability and Compensation Act,

(3) amounts remaining on the date of the enactment of this section in the Deepwater Port Liability Fund established by section 18(f) of the Deepwater Port Act of 1974,

(4) amounts remaining on the date of the enactment of this section in the Offshore Oil Pollution Compensation Fund established under section 302 of the Outer Continental Shelf Lands Act Amendments of 1978, and

(5) amounts credited to such trust fund under section 311(s) of the Federal Water Pollution Control Act.

c) EXPENDITURES.—

(1) GENERAL EXPENDITURE PURPOSES.—

(A) IN GENERAL.—Amounts in the Oil Spill Liability Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures for—

(i) the payment of removal costs described in section 6501(24)(A) of the Comprehensive Oil Pollution Liability and Compensation Act,

(ii) the payment of claims under the Comprehensive Oil Pollution Liability and Compensation Act for damage which is not otherwise compensated,

(iii) carrying out subsections (c), (d), (i), and (1) of section 311 of thje Federal Water Pollution Control Act with respect to any discharge of oil (as defined in such section),

(iv) carrying out section 5 of the Intervention on the High Seas Act relating to oil pollution or the substantial threat of oil pollution,

(v) the payment of all expenses of administration incurred by the Federal Government under the Comprehensive Oil Pollution Liability and Compensation Act, and

(vi) the payment of contributions to the International Fund under section 6544 of such Act.

(B) SPECIAL RULES.—

(i) PAYMENTS TO GOVERNMENTS ONLY FOR REMOVAL COSTS.—Amounts shall be available under subparagraph (A) for payments to any government only for removal costs and administrative expenses related to removal costs.

(ii) RESTRICTIONS ON CONTRIBUTIONS TO INTERNATIONAL FUND.—Under regulations prescribed by the Secretary, amounts shall be available under subparagraph (A) with respect to any contribution to the International Fund only in proportion to the portion of such fund used for a purpose for which amounts may be paid from the Oil Spill Liability Trust Fund.

(iii) REFERENCES TO OTHER ACTS.—Any reference in any clause of subparagraph (A) to any Act shall be treated as a reference to such Act as in effect on the date of the enactment of this section.

(2) LIMITATIONS ON EXPENDITURES.—

(A) $200,000,000 PER INCIDENT.—The maximum amount which may be paid from the Oil Spill Liability Trust Fund

with respect to any single incident shall not exceed $200,000,000.

(B) $30,000,000 MINIMUM BALANCE.—Except in the case of payments described in paragraph (1)(A), a payment may be made from such Trust Fund only if the amount in such Trust Fund after such payment will not be less than $30,000,000.

(d) AUTHORITY TO BORROW.—

(1) IN GENERAL.—There are authorized to be appropriated to the Oil Spill Liability Trust Fund, as repayable advances, such sums as may be necessary to carry out the purposes of such Trust Fund.

(2) LIMITATION ON AMOUNT OUTSTANDING.—The maximum aggregate amount of repayable advances to the Oil Spill Liability Trust Fund which is outstanding at any one time shall not exceed $300,000,000.

(3) REPAYMENT OF ADVANCES.—Rules similar to the rules of paragraph (3) of section 223(c) of the Hazardous Substance Response Revenue Act of 1980 shall apply for purposes of this subsection.

(4) FINAL REPAYMENT.—No advance shall be made to the Oil Spill Liability Trust Fund after September 30, 1990, and all advances to such Fund shall be repaid on or before such date.

(e) LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

(1) GENERAL RULE.—Any claim filed against the Oil Spill Liability Trust Fund may be paid only out of such Trust Fund.

(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Comprehensive Oil Pollution Liability and Compensation Act or in any amendment made by such Act shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Oil Spill Liability Trust Fund.

(f) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Oil Spill Liability Trust Fund has insufficient funds (or is unable by reason of subsection (c)(2)) to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extend permitted under such subsections, be paid in full in the order in which they are finally determined.

* * * * * * *

SECTION 221 OF THE HAZARDOUS SUBSTANCE RESPONSE REVENUE ACT OF 1980

SEC. 221. ESTABLISHMENT OF HAZARDOUS SUBSTANCE RESPONSE TRUST FUND

(a) * * *

* * * * * * *

(b) TRANSFERS TO RESPONSE TRUST FUND.—

(1) AMOUNTS EQUIVALENT TO CERTAIN TAXES, ETC.—There are hereby appropriated, out of any money in the Treasury not otherwise appropriated, to the Response Trust Fund amounts

determined by the Secretary of the Treasury (hereinafter in this subtitle referred to as the "Secretary") to be equivalent to—

(A) the amounts received in the Treasury under section 4611 or 4661 of the Internal Revenue Code of 1954,

(B) the amounts recovered on behalf of the Response Trust Fund under this Act,

(C) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act,

(D) penalties assessed under title I of this Act, and

(E) punitive damages under section 107(c)(8) of this act.

In the case of the tax imposed by section 4611, subparagraph (A) shall apply only to so much of such tax as is attributable to the Superfund financing rate under section 4611(c).

CHAPTER 17—NATIONAL OCEAN SURVEY

Sec.

857-1. National Oceanic and Atmospheric Administration; definitions.
857-2. Retirement of officers; retired grade; retired pay; conditions; satisfactory service, length of service.
857-3. Service for purposes of certain rights, privileges, immunities, and benefits; exercise of authority by the Secretary of Commerce.
857-4. Commissary privileges.
857-5. General Provisions.
857-6 to 857-12. Repealed.
857-13. National Advisory Committee on Oceans and Atmosphere.

* * * * * * *

33 U.S.C. 857-13 THROUGH 857-18

[§ 857-13. National Advisory Committee on Oceans and Atmosphere

[There is hereby established a committee of 18 members to be known as the National Advisory Committee on Oceans and Atmosphere (hereinafter in sections 857-13 to 857-18 of this title referred to as the "Committee").

[§ 857-14. Membership

(a) Appointment and qualifications

[The members of the Committee, who may not be full-time officers or employees of the United States, shall be appointed by the President. Members shall be appointed only from among individuals who are eminently qualified by way of knowledge and expertise in the following areas of direct concern to the Committee—

[(1) one or more of the disciplines and fields included in marine science and technology, marine industry, marine-related State and local governmental functions, coastal zone management, or other fields directly appropriate for consideration of matters of ocean policy; or

[(2) one or more of the disciplines and fields included in atmospheric science, atmospheric-related State and local governmental functions, or other fields directly appropriate for consideration of matters of atmospheric policy.

[(b) Terms

[(1) The term of office of a member of the Committee shall be 3 years; except that of the original appointees, 6 shall be appointed for a term to expire on July 1, 1979, 6 shall be appointed for a term to expire on July 1, 1980, and 6 shall be appointed for a term to expire on July 1, 1981.

[(2) Any individual appointed to fill a vacancy occuring before the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term. No individual may be reappointed to the Committee for more than one additional 3-year term. A member may serve after the date of the expiration of the term of office for which appointed until his or her successor has taken office. The terms of office for members first appointed after July 5, 1977, shall begin on July 1, 1977.

[(c) Chairman

[The President shall designate one of the members of the Committee as the Chairman and one of the members as the Vice Chairman. The Vice Chairman shall act as Chairman in the absence or incapacity of, or in the event of a vacancy in the office of, the Chairman.

[(d) Duties

[The Committee shall—

[(1) undertake a continuing review, on a selective basis, or national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; and

(2) advise the Secretary of Commence with respect to the carrying out of the programs administered by the National Oceanic and Atmospheric Administration.

[§ 857-15. Reports

[(a) In general

[The Committee shall submit an annual report to the President and to the Congress setting forth an assessment, on a selective basis, of the status of the Nation's marine and atmospheric activities, and shall submit such other reports as may from time to time be required by the President or the Congress.

[(b) Review by Secretary

[Each annual report shall also be submitted to the Secretary of Commerce, who shall, within 60 days after receipt thereof, transmit his or her comments and recommendations to the President and to the Congress.

[(c) Annual report submittal

[The annual report required under subsection (a) of this section shall be submitted on or before June 30 of each year, beginning with June 30, 1978.

[§ 857-16. Compensation and travel expenses

[Members of the Committee shall each be entitled to receive compensation not to exceed the daily rate for a GS-18 for each day (including traveltime) during which they are engaged in the actual performance of the duties of the Committee. In addition, while away from their homes or regular places of business in the performance of the duties of the Committee, each member of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of Title 5.

[§ 857-17. Interagency cooperation and assistance

[(a) Liaison

[The head of each department or agency of the Federal Government concerned with marine and atmospheric matters shall designate a senior policy official to participate as observer in the work of the Committee and offer necessary assisance.

[(b) Agency assistance

[The Committee is authorized to request from the head of any department, agency, or independent instrumentality of the Federal Government any information and assistance it deems necessary to carry out the functions assigned under sections 857-13 to 857-18 of this title. The head of each such department, agency, or instrumentality is authorized to cooperate with the Committee, and, to the extent permitted by law, to furnish such information and assistance to the Committee upon request made by the Chairman, without reimbursement for such services and assistance.

[(c) Administrative assistance

[The Secretary of Commerce shall make available to the Committee such staff, information, personnel, and administrative services and assistance as may reasonably be required to carry out the provisions of sections 857-13 to 857-18 of this title.

[§ 857-18. Authorization of appropriations

[There are authorized to be appropriated for purposes of carrying out sections 857-13 to 857-18 of this title not to exceed $520,000 for the fiscal year ending September 30, 1978, $572,000 for the fiscal year ending September 30, 1979, $565,000 for the fiscal year ending September 30, 1980, $600,000 for the fiscal year ending September 30, 1981, and $555,000 for the fiscal year ending September 30, 1982. Such sums as may be appropriated under this section shall remain available until expended.]

43 U.S.C. 1334(i), (j)

(i) FLARING OF NATURAL GAS.—After September 18, 1978 no holder of any oil and gas lease issued or maintained pursuant to this subchapter shall be permitted to flare nature gas from any well unless the Secretary finds that their is no practicable way to complete production of such gas, or that such flaring is necessary to alleviate a temporary emergency situation or to conduct testing or work-over operations.

(j)(1) Any vessel, rig, platform, or other structure used for the purpose of exploration or production of oil and gas on the outer Continental Shelf south of 49 degree North latitude. shall be built—

(A) in the United States; and

(B) from articles, materials, or supplies at least 50 percent of which, by cost, shall have been mined, produce, or manufactured, as the case may be, in the United States.

(2) The requirements of paragraph (1) shall not apply to any vessel, rig, platform, or other structure which was built, which is being built, or for which building contract has been executed, on or before October 1, 1986.

(3) The Secretary may waive—

(A) the requirement in paragraph (1)(B) whenever the Secretary detemines that 50 percent of the articles, materials, or supplies for a vessel, rig, platform, or other structure cannot be mined, produced, or manufactured, as the case may be, in the United States, and

(B) the requirement in paragraph (1)(A) upon application, with respect to any classification of vessels, rigs, platforms, or other structures on a specific lease, when the Secretary determines that at least 50 percent of such classification, as calculated by number and by weight, which are to be built for exploration or production activities under such lease will be built in the United States in compliance with the requirements of paragraph (1)(A).

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC July 28, 1986.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached tables analyzing the budget impact of the reconciliation recommendations ordered reported by the House Committee on Merchant Marine and Fisheries on July 24, 1986. Table 1 summarizes the budgetary effects relative to current law. Table 2 summarizes the effects relative to the budget resolution baseline, as adjusted for enacted legislation. The House Budget Committee has specified that reconciliation savings are to be measured from the baseline used by the budget conferees, adjusted for subsequently enacted legislation.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

TABLE 1.—FEDERAL BUDGET IMPACT RELATIVE TO CURRENT LAW

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
Title 1—Ocean Dumping Application and Special Fees [1]					
Estimated budget authority	−3	−6	−8	−8	−8
Estimated outlays	−3	−6	−8	−8	−8
Title 3—Amendments to the Ship Mortgage Act [2]					
Estimated budget authority	−34	−36	16	27	12
Estimated outlays	−34	−36	16	27	12
Title 4—Coast Guard User Fees [3]					
Receipts:					
Estimated budget authority	−1	−2			
Estimated outlays	−1	−2			
Administrative costs:					
Estimated authorization level		(*)	(*)	(*)	(*)
Estimated outlays		(*)	(*)	(*)	(*)
Title 5—Adjustment of the U.S. Investment Base in the Panama Canal [4]					
Estimated authorization level	−9				
Estimated budget authority		−6	−5	−5	−5
Estimated outlays	−9	6	−5	−5	−5
Title 6—Comprehensive Oil Pollution Liability and Compensation Act [5]					
Estimated spending effect:					
Estimated authorization level	2				
Estimated outlays	2				
Estimated revenue effect:					
Estimated revenues after credits and repeal of existing tax	56	62	67	67	4
Less: income tax offset	−14	−15	−17	−17	−1
Net revenues	41	47	50	50	3
Title 7—National Offshore Vessels Operating Safety Advisory Committee					
Estimated authorization level	(*)	(*)	(*)	(*)	(*)
Estimated outlays	(*)	(*)	(*)	(*)	(*)
Title 8—Repeal of the Act Establishing the National Advisory Committee on Oceans [6]					
Estimated authorization level					
Estimated outlays					
Total Budget Impact Relative to Current Law					
Authorizations:					
Estimated authorization level	−7	(*)	(*)	(*)	(*)
Estimated outlays	−7	(*)	(*)	(*)	(*)
Direct spending:					
Estimated authorization level	−38	−50	3	14	−1
Estimated outlays	−38	−50	3	14	−1
Revenues: Estimated net revenues	42	47	50	50	3

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* Less than $500,000.

[1] The table does not include receipts that could be recouped for the monitoring costs of agencies such as NOAA and the Army Corps of Engineers. These costs are estimated to be under $2 million a year, and some of them (such as Corps monitoring costs) may now be the responsibility of dredging permittees.

[2] Title 3 would enable the Maritime Administration to take possession (and title) to a vessel that has defaulted on its loans to the agency after April 1, 1986, and has declared bankruptcy. The primary impact of this title is essentially one of timing: under current law, MARAD is able to recover its losses on court-protected vessels only after lengthy bankruptcy proceedings that can delay the transfer of title by several years. The CBO estimates assumes that the effect of Title 3 would be to speed up recoveries on assets of bankrupt defaulters by about two years. In the first two years, this would result in savings, but after this, these provisions would result in outlay increases, because defaults and, correspondingly, recoveries fall in later years, and recoveries that are moved forward become smaller. The net impact of the title over five years is a savings of $15 million.

Any estimate of savings from enactment of this title depends on assumptions regarding market conditions, MARAD policies, and other very uncertain factors. The results of this analysis depend heavily on the assumption that ships obtained by MARAD under the bill will be sold in a timely fashion. If the agency does not sell its assets for any reason (including further deterioration of market conditions or industrial policy considerations), the bill could result in costs rather than savings. This would occur because the government, by taking control of the asset, would forgo bankruptcy protection payments to which it would otherwise be entitled and, in addition, would incur maintenance and other custodial costs from a much earlier date than under current law.

[3] Title 4 authorizes the collection of Coast Guard user fees for services related to load line and admeasure activities and is similar to H.R. 1362, as reported by the House Committee on Merchant Marine and Fisheries, November 12, 1985. The estimate is the same as the one prepared at each

time, except for the assumed enactment date, which has been changed to October 1, 1986, and the estimated receipts, which have been updated on the basis of new information.

[4] Title 5 would increase the U.S. investment in the Panama Canal by approximately $62 million as of January 1, 1986. This increase in the investment base is estimated to produce savings of $9.4 million in fiscal year 1987 and about $5.8 in fiscal year 1988.

In fiscal year 1987 only, the Committee has indicated that it intends that the savings for both the 1986 and 1987 increase in interest would be reflected in a reduction in the Payment to Panama account. (A small amount of savings is assumed to be carried over into 1988, when it would be recovered through an increase in receipts.) Beginning in 1988, the savings would be reflected in increased offsetting receipts to the Panama Canal Commission Fund (and thus increased miscellaneous receipts of the general fund). If H.R. 4409, which has passed both Houses, is signed into law, savings would be less in 1987 and more in subsequent years.

[5] All estimates for Title 6, the Comprehensive Oil Pollution Liability and Compensation Act, are identical to CBO's earlier estimate of H.R. 1232, as ordered reported by the House Committee on Merchant Marine and Fisheries, July 22, 1985, except for the following items: (1) repeal of the Offshore Oil Compensation Fund is expected to result in decreased revenues only for one-half of 1987, since that fund's balance is now expected to reach the statutory ceiling of $100 million in the next fiscal year; (2) credits for taxes paid into the Deepwater Port Liability or Offshore Oil Compensation funds are not transferrable in this bill, as they were in H.R. 1232, thus reducing the credits that might be expected to reduce revenues each year; (3) there is no $200 million fund balance ceiling set in this bill; tax provisions would be in effect from October 1, 1986 through October 1, 1990; and (4) the 1.3 cent fee is a tax rather than an insurance premium.

In 1987 only, CBO estimates that the Department of Transportation would spend an estimated $2 million in start-up costs. All ongoing administrative and clean-up costs are estimated to approximate those incurred under current oil spill statutes. The table includes no estimate for liability claims against the fund, as these are rare, unpredictable and difficult to estimate.

[6] The Committee is funded through an annual authorization and appropriation. Repeal would have no impact on a current law basis.

Titles 2 and 9 are not expected to have any significant impact on the federal budget.

Title 10 would require that vessels and structures used for exploration or protection of oil and gas on the Outer Continental Shelf be built in the United States of articles that were at least 50 percent originated from this country. Enactment of this title may result in a decrease in future OCS bonus bids, but this effect cannot be estimated.

Note: Negative outlays denote a reduction in spending and a decrease in the deficit. Negative revenue figures denote a loss of revenue and an increase in the deficit.

TABLE 2.—FEDERAL COSTS RELATIVE TO THE BUDGET RESOLUTION BASELINE AS ADJUSTED FOR ENACTED LEGISLATION

[By fiscal year, in millions of dollars]

	1987	1988	1989
Title 1—Ocean Dumping Application and Special Fees			
Estimated budget authority	−3	−6	−8
Estimated outlays	−3	−6	−8
Title 3—Amendments to the Ship Mortgage Act			
Estimated budget authority	−34	−36	16
Estimated outlays	−34	−36	16
Title 4—Coast Guard User Fees			
Receipts:			
Estimated budget authority	−1	−2	
Estimated outlays	−1	−2	
Administrative Costs:			
Estimated authorization level		(1)	(1)
Estimated outlays		(1)	(1)
Title 5—Adjustment of the U.S. Investment Base in the Panama Canal			
Estimated authorization level	−9		
Estimated budget authority		−6	−5
Estimated outlays	−9	−6	−5
Title 6—Comprehensive Oil Pollution Liability and Compensation Act			
Estimated spending effect:			
Estimated authorization level	2		
Estimated outlays	2		
Estimated revenue effect:			
Estimated revenues after credits and repeal of existing tax	56	62	67
Less income tax offset	−14	−15	−17
Net revenues	42	47	50
Title 7—National Offshore Vessels Operating Safety Advisory Committee			
Estimated authorization level	(1)	(1)	(1)
Estimated outlays	(1)	(1)	(1)
Title 8—Repeal of the Act Establishing the National Advisory Committee on Oceans			
Estimated authorization level	−1	−1	−1
Estimated outlays	−1	−1	−1
Total: Costs Relative to Budget Resolution Baseline			

TABLE 2.—FEDERAL COSTS RELATIVE TO THE BUDGET RESOLUTION BASELINE AS ADJUSTED FOR ENACTED LEGISLATION—Continued

[By fiscal year, in millions of dollars]

	1987	1988	1989
Authorizations:			
Estimated authorization level	−8	−1	−1
Estimated outlays	−8	−1	−1
Direct spending:			
Estimated authorization level	−38	−50	3
Estimated outlays	−38	−50	3
Revenues: Estimated net revenues	42	47	50

[1] Less than $500,000.

Note: Negative outlays denote a reduction in spending and a decrease in the deficit. Negative revenue figures denote a loss of revenue and an increase in the deficit.

TITLE VII—COMMITTEE ON POST OFFICE AND CIVIL SERVICE

House of Representatives,
Committee on Post Office and Civil Service,
Washington, DC, July 25, 1986.

Hon. William H. Gray III,
Chairman, Committee on the Budget,
U.S. House of Representatives, Washington, DC.

Dear Mr. Chairman: Transmitted herewith are the recommendations of the Committee on Post Office and Civil Service submitted in accordance with the reconciliation instructions contained in S. Con. Res. 120 (Concurrent Resolution on the Budget—Fiscal Year 1987). These recommendations were approved by the Committee on July 23, 1986, by a record vote of 22–0.

Also transmitted herewith for inclusion in the Budget Committee's report are an accompanying statement, section analysis, and a Ramseyer. The Congressional Budget Office cost savings estimate will be transmitted as soon as it is available.

With kind regards,

Sincerely,

William D. Ford, *Chairman.*

Enclosures.

Report To Accompany Recommendations From the Committee on Post Office and Civil Service

COMMITTEE ACTION

Section 2 of S. Con. Res. 120 (Concurrent Resolution on the Budget—FY 1987) instructs the Committee on Post Office and Civil Service to report changes in laws within its jurisdiction that will reduce budget authority and outlays by $100 million in each of the fiscal years 1987, 1988, and 1989. On July 23, 1986, the Committee on Post Office and Civil Service met and approved by a record vote of 22–0, a quorum being present, the recommendations explained below. The recommendations exceed the required savings in fiscal year 1987 and substantially achieve the savings required over the three-year period.

STATEMENT

Accelerate Participation in Thrift Savings Plan

The recommendation would permit employees covered by the Civil Service retirement System (CSRS) to begin contributing to the Thrift Savings Plan established by the Federal Employee's Retirement System Act of 1986 in January 1987 rather than July 1987. As a result, those employees who choose to participate in the Thrift Savings Plan would have six additional months during fiscal year 1987 during which contributions would be withheld from their pay and invested on budget under the Plan. These additional contributions would reduce the Fedeal budget deficit by over $100 million in fiscal year 1987.

Background

The Federal Retirement System Act of 1986 establishes a three-tier retirement program for those Federal Employees covered by social security. The three tiers are: (1) social security; (2) a defined benefit pension plan; and (3) a tax-deferred thrift savings plan similar to 401(k) plans common in the private sector. Under the Thrift Savings Plan, an employee may contribute to the plan, and thereby shelter from taxation, up to 10 percent of salary each pay period. The Government matches up to 5 percent of the employee's contribution. Under the Act, the new retirement program commences in January 1987 at which time those employees covered by the new program may begin contributing to the Thrift Savings Plan.

The Act also permits those employees covered under the Civil Service Retirement System to participate in the tax-deferred thrift plan with certain qualifications. The qualifications are: an employee may contribute only up to 5 percent of pay each day period; employee contributions are not matched by the Government; employee contributions may be invested only in Government securities; and an employee may not begin to contribute until July 1, 1987.

The reconciliation recommendation would permit employees under the CSRS to begin contributing to the tax-deferred thrift plan in January 1987. This is the same time employees under the new plan are permitted to begin making contributions and will provide an additional six months during which the affected employees may enjoy the benefits of the tax-deferred savings plan. The other qualifications for CSRS employee participation are unaffected. Similarly, the provisions of the Act relating to the six-month "open season" during which employees may switch from the CSRS to the new program are unaffected.

Revised Method for Computing Revenue Forgone Appropriation

This provision implements one of the recommendations of the Postal Rate Commission from the June 18, 1986 report on its preferred rate study, which was required by the Consolidated Omnibus Budget Reconciliation Act of 1985. This recommendation revises the method for computing the amount of the revenue forgone appropriation for reduced-rate mail. Called the "equal markup" method, it defines the amount to be appropriated in terms of a percentage "markup" over the attributable cost level that determines the reduced postage rates which the mailers of reduced-rate mail have to pay. Each of the reduced-rate categories will have the same percentage "markup" over attributable costs as is set for the most closely corresponding regular-rate category in postal rate proceedings, in order to help cover the institutional cost of the postal system. Through the revenue forgone appropriation, the Federal treasury will then bear the same percentage contribution to institutional costs as regular ratepayers are required to pay for the same general type of mail.

Because all of the institutional costs of the postal system must be paid by someone, any reduction in the portion to be paid from appropriations inevitably affects the postage rates which must be charged to other kinds of mail. There can be no saving for the Government as a whole until postage rates in general are adjusted to reflect the revised methodology for determining how much should be received from appropriations. Accordingly, the revised methodology will be introduced in conjunction with the next general rate adjustment, but for appropriation purposes will take effect not later than January 1, 1989.

Enactment of this provision will result in savings of approximately $200 million in fiscal year 1989.

SECTION ANALYSIS

The reconciliation recommendations of the Committee on Post Office and Civil Service are set forth in title VII of the bill.

Section 7001

Section 7001 advances by approximately six months the earliest date for certain elections to participate in the Thrift Savings Plan established by the Federal Employees' Retirement System Act of 1986 (P.L. 99-335). Individuals affected by this change are those employees subject to the Civil Service Retirement System (CSRS). Section 206(b) of Public Law 99-335 presently provides that these individuals may not commence participation in the Thrift Savings Plan until the first election period which commences on or after July 1, 1987.

Section 7001 of the bill amends section 206 of Public Law 99-335 to provide that an election may first be made by an employee or Member of Congress (who is subject to the CSRS) during the election period provided under section 8432(b)(4) of title 5, United States Code. Section 8432(b)(4) requires the Executive Director of the Federal Retirement Thrift Investment Board of establish such an election period which shall commence January 1, 1987. Section 7001 further amends section 206(b) of Public Law 99-335 to provide that an election by an employee or Member during the election period described above shall be effective on the first day of the employee's or Member's first pay period which begins after the last day of that election period. Finally, paragraph (2) of section 206(b), as amened by section 7001 of the bill, provides that the Executive Director may prescribe regulations to carry out section 206(b).

Section 7002

Section 7002 alters the method by which the U.S. Postal Service computes its annual request to the Congress for the revenue forgone appropriation for the support of free and reduced-rate mail. The result of this section's requirement that the Postal Service use this new method will be a decrease in the requested appropriation amount, with no adverse impact on the mailers who use the reduced-rate categories.

Section 7002(a) of the bill amends section 3626 of title 39, United States Code, by adding a new subsection (i).

The new paragraph (i)(1) defines the terms "reduced-rate category" and "regular-rate category". Essentially, the "reduced-rate category" consists of the preferred rates and preferred mailers benefiting from the subsidized postage rates which the annual revenue forgone appropriation makes possible (for example, nonprofit philanthropic organizations). The "regular-rate category" includes all types of mail not included in the "reduced-rate category" (for example, third-class commercial advertising mail).

The new paragraph (i)(2) sets forth the method by which the Postal Service is to calculate the amounts of its requests for revenue forgone appropriations as authorized by section 2401(c) of title 39, United States Code.

Known as the "equal markup" method, the calculation is to be made by the Postal Service by applying hypothetical percentage "markups" to reduced-rate categories which are no greater than the actual institutional cost percentage "markups" applied to the most closely corresponding regular-rate categories. Presently, the method which the Postal Service uses to compute the revenue forgone appropriation assumes that, if there were no revenue forgone appropriation, reduced-rate categories would be "marked up" to the full level of the most closely corresponding regular-rate categories. The new method will alter this assumption and require that the hypothetical percentage "markup" for reduced-rate categories be no greater than the actual percentage "markup" for regular-rate categories. The result will be lower appropriations, with no adverse impact on the reduced-rates or on reduced-rate mailers. This provision is not intended to create new subclasses or categories, or to require or authorize the Postal Service or the Postal Rate Commission to begin calculating actual institutional cost "markups" for reduced-rate categories.

Section 7002(b) of the bill is a conforming amendment to section 2401(c) of title 39, United States Code.

Section 7002(c) of the bill provides that the amendments shall take effect on January 1, 1989, or on the effective date of the next general change in postal rates and fees, whichever is sooner.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 206 OF THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM ACT OF 1986

SEC. 206. PARTICIPATION BY CERTAIN EMPLOYEES AND MEMBERS ONLY IN THE THRIFT SAVINGS PLAN.

(a) * * *

[(b) An election may first be made by an employee of the Federal Government or a Member of Congress under section 8351 of title 5, United States Code (as added by subsection (a)(1)), during the first period referred to in subsection (a)(2) of such section which commences on or after July 1, 1987.]

(b)(1) An election may first be made by an employee of the Federal Government or a Member of Congress under section 8351 of title 5, United States Code (as added by subsection (a)(1)), during the election period provided under section 8432(b)(4) of such title. An election by such an employee or Member during that election period shall be effective on the first day of the employee's or Member's first pay period which begins after the last day of that election period.

(2) The Executive Director of the Federal Retirement Thrift Investment Board may prescribe regulations to carry out this subsection.

* * * * * * *

TITLE 39, UNITED STATES CODE

PART III—MODERNIZATION AND FISCAL ADMINISTRATION

* * * * * * *

CHAPTER 24.—APPROPRIATIONS AND ANNUAL REPORT

* * * * * * *

§ 2401. Appropriations

(a) * * *

* * * * * * *

(c) There are authorized to be appropriated to the Postal Service each year a sum determined by the Postal Service to be equal to the difference between the revenues the Postal Service would have received if sections 3217, 3403–3405, and [3626] *3626(a)–(h)* of this title, the Overseas Citizens Voting Rights Act of 1975, and the Federal Votinig Assistance Act of 1955 had not been enacted and the estimated revenues to be received on mail carried under such sections and Acts. In requesting an appropriation under this subsection for a fiscal year, the Postal Service shall include an amount to reconcile sums authorized to be appropriated for prior fiscal years on the basis of estimated mail volume with sums which would have been authorized to be appropriated if based on the final audited mail volume.

* * * * * * *

PART IV—MAIL MATTER

* * * * * * *

CHAPTER 36.—POSTAL RATES, CLASSES, AND SERVICES

* * * * * * *

Subchapter II—Permanent Rates and Classes of Mail

* * * * * * *

§ 3626. Reduced rates

(a) * * *

* * * * * * *

(i)(1) As used in this subsection—

(A) "reduced-rate category" means any class of mail or kind of mailer for which a rate schedule is established under subsection (a) of this section; and

(B) "regular-rate category" means any class or kind of mail other than a class or kind referred to in section 2401(c) of this title.

(2) This subsection shall be used in determining the costs recovered by revenues plus appropriations for the reduced-rate categories, for the purpose of distinguishing costs to be recovered from rates and fees for regular-rate categories under this chapter, and for the purpose of determining the appropriation requests under section 2401(c) of this title relating to the reduced-rate categories. It shall be assumed that the combination of postage and appropriations to be received for each of the reduced-rate categories will bear the same ratio to the costs attributed as required by section 3622(b)(3) of this title to such respective categories, as the revenues to be received from the most closely corresponding regular-rate category, as estimated in determining the rates for such category, bear to the costs attributed to that regular-rate category as required by section 3622(b)(3) of this title.

* * * * * * *

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 28, 1986.

Hon. WILLIAM D. FORD,
Chairman, Committee on Post Office and Civil Service,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached table analyzing the budget impact of the reconciliation recommendations adopted by the House Committee on Post Office and Civil Service on July 22, 1986.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

C.G. NUCKOLS
(for Rudolph G. Penner).

RECONCILIATION RECOMMENDATIONS OF THE HOUSE COMMITTEE ON POST OFFICE AND CIVIL SERVICE—FEDERAL BUDGET IMPACT RELATIVE TO CURRENT LAW AND THE BUDGET RESOLUTION BASELINE

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
Authorization:					
Postal Service:[1]					
Estimated authorization level			−210	−300	−300
Estimated outlays			−210	−300	−300
Direct spending:					
Civil service Retirement:[2]					
Estimated budget authority					
Estimated outlays	−155	36	26	28	30
Revenues[2]	−30	4	3	4	4

[1] The Committee recommendations would revise the basis for determining costs to be recovered by revenues plus appropriations for reduced-rate categories of mail. If this legislation is enacted, and if appropriations in future years are adjusted correspondingly, revenue forgone payments would be an estimated $594 million in 1989, $539 million in 1990, and $575 million in 1991. It is possible that these amounts would be insufficient to maintain current postal rates for preferred mailers.

[2] The Committee recommendations would make it possible for certain federal employees to contribute to the government retirement program's thrift savings plan earlier than under current law. These earlier contributions would be reflected as increased offsetting collections in 1987, but would result in greater outlays in subsequent years as a result of increased withdrawals. In addition, because the contributions are tax-deductible, the government would lose tax revenues as a result of increased contributions in 1987, and gain revenues as a result of increased withdrawals in subsequent years.

Note: Negative outlays represent a decrease in spending and in the deficit. Negative revenue figures represent a decrease in revenues, and an increase in the deficit.

TITLE VIII—COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

U.S. House of Representatives,
Committee on Public Works and Transportation,
Washington, DC, July 25, 1986.

Hon. William H. Gray III,
Chairman, Committee on the Budget,
House of Representatives, Washington, DC.

Dear Mr. Chairman: Enclosed is the reconciliation submission of the Committee on Public Works and Transportation, pursuant to section 2 of the Concurrent Resolution on the Budget for Fiscal Year 1987, along with other matters as required by the House Rules and in accordance with your letter of July 17, 1986.

Every best wish.

Sincerely,

James J. Howard, *Chairman.*

Report To Accompany Recommendations From the Committee on Public Works and Transportation

TITLE VIII

Subtitle A—Highway Programs

CONTRACT AUTHORITY

Section 8001 of the bill provides that notwithstanding any other provision of law, the total amount of contract authority to be provided for programs funded from the Highway Trust Fund (excluding the National Highway Traffic Safety Administration section 402 traffic safety grant program; the Mass Transit Account; the maintenance of railroad-highway crossings program under section 145 of H.R. 3129, as reported by the Committee on Public Works and Transportation or the conference report relating thereto; the motor carrier safety grant program under section 404 of the Surface Transportation Assistance Act of 1982; and the university transportation centers program under section 11(b) of the Urban Mass Transportation Act of 1964) shall not exceed for the fiscal year ending September 30, 1987, $13,527,000,000; for the fiscal year ending September 30, 1988, $13,527,000,000; and for the fiscal year ending September 30, 1989, $13,527,000,000.

These amounts represent the aggregate level of total contract authority for programs funded from the Highway Trust Fund and administered by the Federal Highway Administration, as contained in H.R. 3129. They do not include contract authority for the NHTSA section 402 highway traffic safety grant program, the maintenance of railroad-highway crossings program under section 145 of H.R. 3129, as reported by the Committee on Public Works and Transportation or the conference report relating thereto; the motor carrier safety grant program under section 404 of the Surface Transportation Assistance Act of 1982; the university transportation centers program under section 11(b) of the Urban Mass Transportation Act of 1964; programs subject to appropriation from the Trust Fund; or programs supported by the Mass Transit Account.

OBLIGATION CEILING

As contained in H.R. 3129, subsection (a) of section 8002 provides a limitation of $11.975 billion for each of the fiscal years 1987 through 1989 on obligations for Federal-aid highway and highway safety construction programs. Subsection (a) would distribute the obligation ceiling among the states each fiscal year on the relative basis of each state's share of apportioned and allocated Federal-aid highway and highway safety construction programs for the fiscal year. Total first quarter obligations would be limited to twenty-five percent and each state's first quarter obligations to thirty-five percent of its share of the annual obligation limitation for fiscal year 1987 through 1989. The priorities in existing law for the August 1 redistribution of unused obligation authority for fiscal years 1987 through 1989 would be continued with equal priority being given on the one hand to those states with large unobligated balances and on the other to those states wich are receiving reduced apportionments as a result of the Federal-Aid Highway Act of 1981, or the STAA of 1982.

Subsection (c) imposes separate obligation constraints of $1,070 million in fiscal year 1987, and $1,020 million in each of the fiscal years 1988 and 1989 on the following programs and projects listed under subsection (b) as specified in H.R. 3129, as may be enacted: highway demonstration projects; emergency relief projects; 85% minimum allocation funds; bridge projects on Federal dams; bridge projects under section 147 of the Surface Transportation Assistance Act of 1978, as amended; the Woodrow Wilson Bridge located in the District of Columbia, Maryland, and Virginia; a demonstration project in Altoona, Pennsylvania on Route 220; a demonstration project in Illinois demonstrating the benefits of constructing usable segments of high-volume facilities; Union Station; a railroad-highway relocation project in Carbondale, Illinois; an environmental impact statement concerning the addition of highway capacity in the Richmond-Willowbrook corridor of Staten Island, New York; a study of the bridge formula; a feasibility study in California utilizing a highway electrification system as a source of energy for highway vehicles; a study to determine the cost-effectiveness of upgrading Route 219 in Pennsylvania and New York to Interstate standards; a feasibility study for constructing a bypass highway around Sebastopol, California; and obligations under subsection (b)(2). Subject to its enactment, subsection (b)(2) would allow each state that uses up to its obligational authority as provided in subsection (a) in a fiscal year as well as any obligational authority redistributed to it on August 1, to obligate an additional 10 percent of its backlogged Federal-aid funds, provided that the total of such additional amounts nationwide does not exceed 5 percent of all backlogged funds.

Subsection (c) is a conforming amendment to assure that funds allocated under the minimum allocation program do not affect the distribution of annual obligation authority under subsection (a).

Section 8003 increases the limit on emergency relief grants for each state to $100 million for each disaster occurring in calendar year 1986.

Subtitle B—Federal Energy Regulatory Commission Annual Charges

PROHIBITION

Section 8101 of the legislation prohibits the Federal Energy Regulatory Commission (FERC) from assessing or collecting any charges from interstate natural gas or interstate oil pipeline carriers except those charges assessed or collected pursuant to a law approved prior to the date of enactment of this Act.

This language revisits an issue which was addressed last year during consideration of H.R. 3500, the Omnibus Budget Reconciliation Act of 1985. That bill contained both a provision, submitted by the Committee on Energy and Commerce, authorizing FERC to assess and collect annual charges from interstate oil or natural gas pipelines and public utilities, and a provision, submitted by the Committee on Public Works and Transportation, prohibiting such assessment or collection, except those charges assessed or collected pursuant to law approved before the enactment of the bill. The Senate bill contained no comparable provision. Notwithstanding the fact that the President's budget for FY86 proposed enactment of FERC annual charges and that the congressional budget assumed the same via reconciliation instructions, the House receded to the Senate on this matter.

The Committee believes that the same reasons which governed the outcome last year are equally compelling today. Congress has not examined to the fullest extent the desirability and feasibility of FERC annual charges and the legal authority for imposing them. Accordingly, the Committee believes that at this time it would be contrary to good public policy to move forward legislatively on this issue.

Subtitle C—Ocean Dumping

The Committee on Merchant Marine and Fisheries included in its reconciliation submission provisions regarding the regulation of the dumping of materials into the ocean. This is a matter which is also within the jurisdiction of the Committee on Public Works and Transportation.

Therefore, to protect that jurisdiction and to ensure that we would be conferees on this matter, the Committee has included in sections 8201-8217 most of the text of H.R. 1957, the "Ocean Dumping Amendments Act of 1985", as passed by the House.

For purposes of legislative history, see Report 99-107, Part 2, and Floor consideration (Congressional Record, Dec. 10, 1985).

Subtitle D—Water Resources

Section 8301 authorizes the Secretary to undertake further studies for engineering and design with appropriate non-Federal sponsors for a project not to exceed 200,000 acre feet of additional flood control and other storage benefits at the existing facility and not to exceed 800,000 acre feet of additional flood control and other storage benefits to alleviate flood and irrigation problems that exist in the existing service area and to report on such study to Congress.

Subtitle E—Highway, Airport and Inland Waterways Trust Funds

The purpose of this subtitle is to take the Highway Trust Fund (including the Mass Transit Account), the Airport and Airway Trust Fund and the Inland Waterways Trust Fund out of the unified budget, thereby protecting them from manipulation either for the purpose of understating the size of the budget deficit (on paper) or for the purpose of increasing spending for programs funded from general revenues. The change is long overdue in light of the following: (1) these trust funds, and the programs financed by them, are subject to an impressive array of controls which render any restraint imposed by the budget process totally unnecessary; (2) in concept and in substance, these trust funds have no place in a unified or consolidated budget; (3) inclusion of the Highway Trust Fund and Airport and Airway Trust Fund in the unified budget has led to the impostion of obligation controls on the Federal-aid Highway and Airport Improvement Programs for a decade and, more recently, the mass transit discretionary capital program, despite Budget Act language clearly recognizing the unique character of the Highway and Aviation Trust Funds; (4) such limitations have had the effect of (a) holding down expenditures under the affected programs below the level which can be sustained by revenues, and (b) constraining the program to an extent unnecessary to any rational program management objectives; and (5) renewed recognition on the part of the Congress that self-financed trust funds are indeed different from general revenues and deserving of treatment accordingly.

Nothing in this subtitle would detract in any manner from the legitimate exercise of authority of the Committee on Ways and Means. Its chief substantive effect would be to help protect the programs from inappropriate meddling.

The following sections discuss the Highway Trust Fund and Airport and Airway Trust Fund in greater detail.

HIGHWAY TRUST FUND

1. Unified Budget Controls Unnecessary.—The Highway Trust Fund (including the Mass Transit Account established by the Surface Transportation Assistance Act of 1982) is subject to ample controls. These are not necessarily the same controls as apply in the case of other programs, but controls they are nonetheless, and they are appropriate to the character of the programs being controlled. First, the programs must be authorized just like any other. True, the authorizations in this case provide contract authority—budget authority—permitting the obligation of funds without intervening appropriations. But the authorizations are typically contained in multi-year legislation also containing a revenue title originating with the Committee on Ways and Means. These authorizations are scrutinized independently by our Committee and that Committee for consistency with levels of revenue provided by existing law or by a given extension and/or expansion measure under consideration by that Committee. They then must be voted in each House (traditionally under an open rule), and signed into law like any other piece of legislation.

Another control, unique to the program, consists of an anti-deficit mechanism known as the Byrd Amendment. This established a mechanism, in the Highway Revenue Act since 1956, whereby the Secretary of the Treasury and the Secretary of Transportation jointly make periodic reviews of estimates of revenues flowing into the trust fund. If anticipated revenues are insufficient to meet anticipated demand, the Secretary of Transportation must withhold or reduce the amounts made available through the key procedure known as apportionment. This consists of the Secretary's formally notifying each state as to the amount which that state is legally to have obligated for Federal-aid eligible projects in the state. Under the Byrd Amendment, as modified by the 1982 STAA, the Secretary may apportion in anticipation of two years' revenue beyond the current year. This is why there is a two-year "overhang", whereby the trust fund is typically extended two years beyond the expiration of the authorizations at the end of fiscal year 1986, and the revenue statute two years later. A comparable provision is applicable to the Mass Transit Account, except that the "overhang" is one rather than two years.

Thus, the trust fund is subject to more control than non-trust fund general revenue programs. While one mechanism applicable to most programs (appropriations) does not apply to these trust fund programs, they are unique in being subject to a combination of two others; the authorization-revenue review and the Byrd Amendment limitations on apportionments.

2. Unsuitability for Unified Budget.—These trust fund-backed, contract authority programs have no place in the unified budget.

This stems from the adequacy of controls, as indicated above, and from the nature of the funds involved. The revenues are derived from users of the highway system rather than the general public and dedicated for highway and transit use. Several consequences flow from this fact. The programs thus financed are not in competition with general revenues; the amounts expended are ultimately determined by the revenue-raising committee and the authorizing committee. The funds cannot be used for any purpose other than the highway and transit purposes for which levied, with the result that any savings achieved by imposition of artificial constraints cannot be diverted to any other use or benefit any program. To the extent that trust funds are used to understate the size of general revenue deficits, this dilutes the discipline which the budget process should exert on spending. To the extent that the trust funds have any bearing on general-fund programs, it lies in the fact that the balance in the fund is available for borrowing by the government for other purposes. The Committee questions whether serving as a source of funds for intra-governmental borrowing is regarded as legitimate grounds for restraining its funding in the view of the highway user or Members who have consistently supported the program.

3. Unified Budget As Basis For Limitation.—The then-new budget process and the concerns of the Budget Committee were cited as grounds for imposing obigation limitations on the highway program when such controls were first applied by legislation in the DOT Appropriations Act for 1976, and reconfirmed in similar legislation the following year. On the Floor on November 11, 1975, the then-Chairman of the Transportation Appropriations Subcommittee stated in response to arguments put forth by the Committee on Public Works and Transportation,

> As I understand the argument of the gentleman, the gentleman wants the highway program to be the only program in the Federal Government for which there is no limitation on the spending that might occur.

The following year, the same floor manager of the Appropriations Act stated similarly,

> We have endeavored to do everything that the Committee on Public Works has recommended to us except not put in a ceiling. We cannot go that far, because if we do not put in a ceiling, then this program will be exempt from the Budget Act and the budget process which that Act establishes.
>
> It would go on unrestricted. In order to cooperate with the Budget Committee and the Budget Act, we have to have a ceiling. I think the gentleman would agree that we cannot exempt; highways and allow the rest of the spending programs of the Federal Government to have ceilings.

Rhetoric of this nature was aired, despite clear-cut language to the contrary in the Budget Act. We refer to section 401(a), which prohibits consideration of any bill providing new spending authority except to the extent that such spending authority has been provided for in appropriations acts. An exception is provided in section

401(d), which made much a requirement inapplicable to funds from the Social Security trust funds or

> . . . any other trust fund, 90 percent or more of the receipts of which consist or will consist of amounts (transferred from the general fund of the Treasury) equivalent to amounts of taxes (related to the purposes for which such outlays are or will be made) received in the Treasury under specified provisions of the Internal Revenue Code of 1954.

It has been recognized beyond dispute, both at the time of the debate and since, that the language quoted above is to be interpreted as referring to the Highway and Aviation Trust Funds. Indeed, a memorandum from the then-Chairman of the Budget Committee specified that the appropriations exemption referred to any trust fund "which is at least 90 percent self-financed (such as the Highway Trust Fund);".

The Committee wishes to emphasize that the use of limitations on trust fund-financed programs to benefit other programs is hardly a matter of classic budgetary tradition. Limitations initiated in 1975 were for the stated purpose of controlling an otherwise explosive surge of spending resulting from the release of previously impounded highway funds. (This incidentally, failed to materialize.) The constraints were described as possibly temporary, and the hope was held forth that if obligations approached the ceiling, reasonable adjustments would be made.

The initial rationale was control of the pace at which the backlog would be released. There was never a forthright declaration of intent that, once a precedent was set and constraints were in place, they would be used to ratchet down the obligation of funds for a given year below the level of authorizations for that year. It is this distortion of the process, not the process itself, which must be remedied. And the history of the past decade has demonstrated that the remedy is placement of these programs off-budget.

4. Limitations Distort Programs.—The manner in which imposition of obligation limitations have been managed has been a big contributor to the perpetuation of a backlog of unobligated apportionments.

Many of the problems of distortion caused by backlog first came to the attention of the Committee some time ago. The Committee attempted to ease the problem at least minimally in the last Congress.

As noted above, the problems of obligation limitations have plagued the affected programs at least since the mid-1970s (in the case of the highway program). Yet they remain quite current. As recently as the issuance last year of the Conference Report on the First Concurrent Resolution on the Budget, the Congress was informed by the budget conferees as follows in the Report discussion of Function 400: Transportation Trust Funds:

> As in the past, the conferees have followed the general policy of assigning reconciliation instructions to authorizing committees of jurisdiction. No instructions have been given to the Appropriations Committees. However, the

> conferees recognize that in the instances of certain transportation trust funds, jurisdiction over imposition of obligation limitations has been a desirable budget control device, permitting all accounts to be considered in setting spending priorities within certain budget functions. In making reconciliation instructions, therefore, the conferees do not intend to alter existing jurisdictional relationships, and except that such relationships will continue as in the past.

And as recently as September 11, 1985, the Appropriations Committee obtained agreement to a Floor amendment to the Transportation Appropriations Act for 1986 reducing obligation authority by roughly $1 billion. This included an unexpected reduction of $90 million in the mass transit discretionary grant obligation, from $1.1 billion to $1.01 billion. This was despite the fact that the budget resolution called for a limitation of $1.1 billion and the fact that the program, according to the Congressional Budget Office, could sustain obligation levels of $1.5 billion for each of the fiscal years 1987 and 1988, and $1.8 billion in each of the fiscal years 1989 and 1990. The rationale for the cuts, as explained by the sponsor, was a follows:

> Mr. Chairman, the overall effect of the amendments we are now considering en bloc is to reduce the spending authority provided in this bill by $1 billion. None of these reductions is desirable, but I think that they are all necessary given the large budget deficits this country faces and the expressed desire of this body for greater efforts to get our budget under control.

The rationale for treating self-financed trust funds as general revenues for budget-balancing or debt-reduction purposes has become no more persuasive in the past decade of the application of obligation limitations to the programs in question. Instead, the rhetoric has simply become more explicit, more institutional. The Committee believes that the time has come to eliminate needless constraints and has resolved to raise the issue squarely, as a problem rooted in the unified budget itself. The Committee would expect to continue the use of obligation limitations in its own legislation to avoid any disruptive surges in obligations which might result if the backlog were suddenly released or otherwise not managed in an orderly manner. But such would be done in light of program realities, rather than under budget pressure from an Administration threatening a veto or a committee of the Congress more concerned with making numbers match neatly if irrelevantly.

5. *Rethinking Trust Fund Controls.*—The Committee believes that on the basis of recent experience, the Congress is becoming more aware of the realities of self-financing trust funds and the programs which they support. This awareness was reflected, for example, in 1982 when the fuels tax was raised by five cents per gallon and one cent of that amount was earmarked for the mass transit account in the Highway Trust Fund to finance discretionary capital grants for new rail starts and extensions, rail modernization, and major bus purchases and bus-related investment. An

attempt was made to strike language giving transit discretionary capital funding the same contract authority afforded the highway trust fund-financed highway programs. This was resoundingly defeated.

The following year, and since, there has been an even more striking development in the matter of the Social Security Trust Funds.

Treatment of the Social Security trust funds under the unified budget concept prompted supporters of that program to pass amendments in 1983 calling for removal of Social Security from the unified budget in 1992. Moreover, that effective date was moved up to fiscal year 1986 with the passage of Gramm-Rudman-Hollings. Following are highlights of the evolution of these developments, in which the Committee sees direct parallels with the programs proposed to be placed off budget in this bill.

The National Commission on Social Security Reform, in its report issued in January of 1983, stated, in pertinent part, the following:

> Before fiscal year 1969, the operations of the Social Security trust funds were not included in the unified budget of the Federal Government, although they were made available publicly and were combined, for purposes of economic analysis, with the administrative budget in special summary tables included in the annual budget document. Beginning then, the operations of the Social Security trust funds were included in the unified budget. In 1974, Congress implicitly approved the use of a unified budget by including the Social Security trust fund operations in the annual budget process. Thus, in years when trust fund income exceeded outgo, the result was a decrease in any general budget deficit that otherwise would have bene shown—and vice versa.
>
> The National Commission believes that changes in the Social Security program should be made only for programmatic reasons, and not for purposes of balancing the budget. Those who support the removal of the operations of the trust funds from the budget believe that this policy of making changes only for programmatic reasons would be more likely to be carried out if the Social Security program were not in the unified budget. Some members also believe that such a procedure will make clear the effect and presence of any payments from the General Fund of the Treasury to the Social Security program. (Under present procedures, such payments are a "wash" and do not affect the overall budget deficit or surplus.)

Later in the year, the Social Security amendments (P.L. 98-21) were enacted which included the following provision:

> SEC. 710. (a) The receipts and disbursements of the Federal Old-Age and Survivor's Insurance Trust Fund, the Federal Disability Insurance Trust Fund and the taxes imposed under section 1401, 3101 and 3111 of the Internal Revenue Code of 1954 shall not be included in the totals of the budget of the United States Government as submitted

> by the President or of the congressional budget and shall be exempt from any general budget limitation improved by statute on expenditures and net lending (budget outlays) of the United States Government.

In report language (Rept. 98-25, Part 1) on the bill, the Committee on Ways and Means offered the following rationale:

> Your Committee believes that it would be desirable to provide assurance that changes in the the Social Security will not be made on the basis of budgetary considerations. Thus, your Committee's bill provides that beginning in fiscal year 1988 (this was later changed), the operations of the OASI (Old-Age and Survivor's Insurance), DI (Disability Insurance), and HI (Hospital Insurance) Trust Funds are to be removed from the unified budget. During the interim years, the the Social Security trust funds would be displayed as a separate function within the budget.

This provision drew little notice or criticism when called up by the House for initial consideration, and passed on March 9, 1983. In August 1985, the the Social Security Subcommittee of the Committee on Ways and Means reported out the bill H.R. 825, section 301 of which provides that effective October 1, 1986, the receipts and disbursements of the Federal Old-Age and Survivor's Insurance Trust Fund and the Federal Disability Insurance Trust Fund (and various related taxes:)

> . . . shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from and general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

The other body, meanwhile, voted 77-22 on September 19, 1985, in support of a sense-of-the-Senate resolution that the the Social Security trust funds be separated from the unified budget. A motion committed the measure sequentially to the Senate Committee on the Budget and the Committee on Financial with instruction to report back on October 16, 1985, and November 3, 1985, respectively, legislation for the purposes of assuring in the best and most reliable manner, that effective October 1, 1986:

> (a) Alterations will not be made in Social Security benefits for the purpose of reducing the Federal deficit; and
>
> (b) The placement and means of considering the Social Security program in relation to the congressional budget will be such that it will be ineffective to seek to achieve reduction of the overall Federal deficit by means of proposing reductions in Social Security benefits;

The Committee contends that the parallel here is overwhelmingly persuasive. To be sure, the transportation trust fund programs are not identical to the Social Security trust funds. However, the differences are such that, if there is merit in removing Social Security from the unified budget, there is an even more compelling case to be made for providing these key transportation programs with equal protection.

1. Unlike Social Security, the transportation programs are not entitlement programs over which the Congress has no direct control. Every dollar in outlays from the transportation funds has been authorized in legislation specifically approved by Congress.

2. The transportation trust funds are totally self-financed, while the Social Security program continually receives general revenue contributions.

3. The highway and transit programs have anti-deficiency protection built into their revenue statute. The Social Security program has not.

4. The Social Security program has been beset with financial difficulties from time to time. By contrast, aside from a necessary adjustment to accommodate a start-up cash-flow problem in early years, the highway trust fund has performed flawlessly.

AIRPORT AND AIRWAY TRUST FUND

The Airport and Airway Trust Fund is fully supported by taxes paid by users of the airport and airway system, including a passenger ticket tax imposed on commercial airlines and a fuel tax imposed on general aviation. These tax revenues are used to support capital development of the airport and airway systems, and as a subsidiary purpose, the operations and maintenance of the air traffic control system.

In 1981, the trust fund program was renewed and user taxes were increased. The users supported these increases because they recognized that higher taxes were needed to support a major program of modernizing the air traffic control system and expanding airport capacity so that the system could handle the increased demands which would be placed upon it during the 1980s. Unless these capital improvements were undertaken, airport and airway congestion would increase dramatically and we would soon be faced with the undesirable alternatives of either incurring major delays or imposing restrictions on operations at congested airports, thereby reducing the benefits of competition. The only way to avoid these problems was to modernize and expand the system.

Regrettably, the programs established in 1981 have not been fully funded and the users have been paying considerably more into the trust fund than has been going out for capital development. In every year since fiscal 1982, obligation ceilings have been imposed on the Airport Improvement Program and as a result of these ceilings, obligations under the AIP through fiscal 1986 have been $444 million less than authorizations.

In fiscal 1986, the obligation ceiling imposed by the House Appropriations Committee will produce an additional shortfall of $92 million below authorized funding.

In the Facilities and Equipment program for modernization of the air traffic control and navigation systems, there has been an even greater shortfall. Through fiscal 1986, appropriations for this program were $1.183 billion below the authorized level. The House Appropriations bill for fiscal 1987 produces an additional $339 million deficiency below the authorization.

These shortfalls are inexcusable when user taxes are producing far more revenues than are needed to support the Airport and Airway Trust Fund programs. As a result of the shortfall, the uncommitted surplus in the Trust Fund has grown from $2.1 billion at the end of fiscal 1982 to an estimated $4.3 billion at the end of fiscal 1986. By the end of fiscal 1987, the uncommitted surplus is estimated to reach approximately $5.0 billion under the appropriations bill being considered by the House.

With the Trust Fund included in the general Presidential and congressional budgets, the increase in the Trust Fund's uncommitted surplus has served to reduce the general budget deficit. In other words, since the beginning of fiscal 1982 aviation users have contributed $1.3 billion to reduce the general budget deficit and under the House bill for fiscal 1987 the aviation users will contribute an additional $700 million to reducing the general budget deficit. This is totally inconsistent with the conceptual basis of user funds. The mistreatment of users in this Aviation Trust Fund threatens our ability to extend the user fund concept to other areas.

The shortfall in spending out of the Trust Fund is largely attributable to the inclusion of the Trust Fund in the Presidential and congressional budgets. When these programs are included in overall budgets the Administration and the Appropriations Committee tend to lose sight of the fact that the Trust Fund programs themselves produce surpluses rather than deficits, and that the justification for imposing specific taxes on aviation users is that the tax revenues will be spent on the aviation system. In the pressure for reductions of general budget deficits, the temptation to cut Trust Fund programs, while gaining the benefit of their revenues, becomes irresistible. Unless this process is stopped, Congress and the users will be unwilling to have the Trust Fund programs continued and the aviation system will suffer the consequences.

Removal of the Airport and Airway Trust Fund from the budget process will not mean that the Trust Fund will be uncontrollable or that the Trust Fund will operate at a deficit. Most of the Trust Fund programs require annual appropriations and removing them from the budget will not change this requirement. As a practical matter, the Trust Fund has operated to produce large surpluses rather than deficits.

To ensure that there will not be deficits in the future, the reported bill adds to the Airport and Airway Trust Fund Program an anti-deficit provision similar to the Byrd Amendment in the Highway Trust Fund which is discussed above. Under this provision, the Secretary of Transportation, in consultation with the Secretary of the Treasury, shall determine on March 31 of each year whether at the end of the next fiscal year there will be an "unfunded aviation authorization" in the Trust Fund. An unfunded aviation authorization exists if the amounts which have been authorized to be appropriated, but have not been appropriated, exceed the uncommitted balance in the fund. (As a practical matter, the Airport and Airway Trust Fund will not have an "unfunded authorization" in the foreseeable future since the uncommitted surplus is considerably greater than unfunded authorizations.)

If there is an unfunded aviation authorization, the Secretary of Transportation next determines whether the Trust Fund receipts (taxes and interest) for the two years following the close of the next fiscal year will be greater than the unfunded authorizations. If the unfunded authorizations are greater than the net receipts, the Secretary determines the percentage which the excess is of the authorized amounts. Each authorization (Airport Improvement Program, Facilities and Equipment, etc.) is then reduced by this same percentage.

The reported bill also permits the restoration of any reductions if the Trust Fund deficit is subsequently reduced or eliminated. If the Secretary determines in a subsequent estimate that the excess of unfunded authorizations over net receipts has been reduced, the authorizations are restored. Each authorization is restored by an equal percentage, up to a point where the unfunded authorizations will equal estimated net receipts to the Trust Fund.

In sum, inclusion of the Airport and Airway Trust Funds in the general budget process has prevented the Trust Fund from functioning as intended and has led to the users contributing far more in taxes than has been spent for development of the airport and airway systems. If we are to continue to realize the benefits of the Trust Fund, this situation must be changed. Under the reported bill the Trust Fund will be removed from the budget process, but will be subject to the appropriations process and an anti-deficit provision. With these controls the Trust Fund will not operate at a deficit.

SECTION-BY-SECTION

Section 8401(a) provides that the receipts and disbursements of the Highway, Transit, Aviation and Inland Waterways Trust Funds shall not be included in the totals of the budget of the U.S. Government as submitted by the President, or the congressional budget, and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the U.S. Government.

Sections 8402 and 8403 add to the Aviation and Inland Waterways Trust Funds an anti-deficit provision similar to the Byrd Amendment in the Highway Trust Fund.

Section 8404(a) exempts from any sequestration order (i.e., "across-the-board cuts") funding from the Highway, Transit, Aviation and Inland Waterways Trust Funds.

Section 8404(b) provides that in calculating the deficit for purposes of comparison with the maximum deficit amount under P.L. 99–177 (i.e., Gramm-Rudman-Hollings) and in calculating the excess deficit for purposes of sections 251 and 252 of that law, for any fiscal year, the receipts of the Highway, Transit, Aviation and Inland Waterways Trust Funds and the taxes payable under the Internal Revenue Code of 1954, as amended, during such fiscal year shall be included in total revenues for such fiscal year, and the disbursements of each such Trust Fund for such fiscal year shall be included in total budget outlays for such fiscal year.

Section 8404(c) provides for a point of order against any budget resolution that assumes or contains in the aggregate totals or functional categories provided for by section 301(a) of the Congressional Budget Act, any amount of budget authority or budget outlays from the Highway, Transit, Aviation or Inland Waterways Trust Funds, and against any budget resolution that contains reconciliation instructions with respect to the Highway, Transit, Aviation or Inland Waterways Trust Funds. It is the intent that such points of order would also apply to any amendment to such budget resolution or conference report thereon.

Subparagraph (3) of this subsection provides for a point of order against any reconciliation bill or resolution, or any amendment thereto or conference report thereon, that contains recommendations with respect to the Highway, Transit, Aviation or Inland Waterways Trust Funds.

Subsection (d) includes conforming enforcement provisions consistent with, and implicit in, the general requirements and intent of this subtitle.

Section 8405 provides that this subtitle shall take effect October 1, 1987, except that the amendments made by section 8404(a)—exemptions from sequestration order—shall take effect March 15, 1987. It is the Committee's intent that the sequestration exemption become effective before the August 15 snapshot and accompanying process begins, if at all, for fiscal year 1988.

Subtitle F—Comprehensive Oil Pollution Liability and Compensation

The Committee on Merchant Marine and Fisheries included in its reconciliation submission provisions regarding oil pollution liability and compensation. This is a matter which is also within the jurisdiction of the Committee on Public Works and Transportation.

Therefore, to protect that jurisdiction and to ensure that we would be conferees on this matter, the Committee has included in sections 8500-8902 the "Comprehensive Oil Pollution Liability and Compensation" title of H.R. 2817, the "Superfund Amendments of 1985", as passed by the House.

For purposes of legislative history, see Report 99-253, Part 5, and Floor consideration (*Congressional Record,* Dec. 5, 6 and 10, 1985).

Subtitle G—Prohibition of Economic Development Administration Loan Sales

This prohibition has been in the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriation Acts since fiscal year 1984 in order to prevent the Department of Commerce from selling off the loan portfolio of the Economic Development Administration.

COMPLIANCE WITH CLAUSE 2(L) OF RULE XI OF THE RULES OF THE HOUSE OF REPRESENTATIVES

(1) With reference to clause 2(l)(3)(A) of Rule XI of the Rules of the House of Representatives, no separate hearings were held on the subject matter of this legislation by the Subcommittee on Investigations and Oversight.

(2) With reference to clause 2(l)(3)(B) of Rule XI of the Rules of the House of Representatives, the recommendation, as approved, does not provide new budget authority or increased tax expenditures. Accordingly, a statement pursuant to section 308(a) of the Congressional Budget Act is not required.

(3) With respect to clause 2(l)(3)(C) of Rule XI of the Rules of the House of Representatives, the Committee has received a report prepared by the Congressional Budget Office under section 403 of the Congressional Budget Act. The report is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 28, 1986.

Hon. JAMES J. HOWARD,
Chairman, Committee on Public Works and Transportation, U.S. House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached tables analyzing the budget impact of the reconciliation recommendations ordered reported by the House Committee on Public Works and Transportation on July 25, 1986. Table 1 summarizes the budgetary effects relative to current law. Table 2 summarizes the effects relative to the budget resolution baseline, as adjusted for enacted legislation. The House Budget Committee has specified that reconciliation savings are to be measured from the baseline used by the budget conferees, adjusted for subsequently enacted legislation.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

TABLE 1.—ESTIMATED BUDGET IMPACT OF RECONCILIATION PROVISIONS—CHANGE FROM CURRENT LAW

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
Direct Spending					
Subtitle A—Highway program:					
Estimated budget authority	9,427	9,427	9,427		
Estimated outlays	−230	−770	1,370	6,620	2,270
Subtitle B—Federal Energy Regulatory Commission annual charges:[1]					
Budget authority					
Outlays					
Authorizations					
Subtitle C—Ocean dumping amendments:[2]					
Estimated net authorization level	8	4			
Estimated outlays	5	4	2	1	(*)
Subtitle F—Comprehensive oil pollution liability and compensation:[3]					
Estimated authorization level	2				
Estimated Outlays	2				
Revenues					
Tax on petroleum	35	69	70	70	4

TABLE 1.—ESTIMATED BUDGET IMPACT OF RECONCILIATION PROVISIONS—CHANGE FROM CURRENT LAW—Continued

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
Less:					
Credits	−5	−7	−3	−3	(*)
Income tax offset	−7	−15	−17	−17	−1
Estimated net revenues	23	47	50	50	3

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* Less than $500,000.

[1] On July 28, 1986, the Congressional Budget Office prepared a cost estimate for reconciliation recommendations of the Committee on Energy and Commerce that also included a provision concerning fees for the Federal Energy Regulatory Commission (FERC). The Energy Committee's proposal would require the FERC to assess and collect additional fees estimated at $39 million in fiscal year 1987, and $208 million over the 1987–1991 period. Such additional fees would be prohibited by the Public Works Committee's reconciliation recommendations.

[2] Subtitle C would authorize fiscal year 1987 and 1988 appropriations of $8.86 million to the EPA for ocean disposal activities. An additional $2 million and $1 million would be authorized for fiscal years 1987 and 1988, respectively, for a study of the New York Bight Apex. Offsetting each year's authorization would be collections from permit application and special fees, which would be credited to the agency's principal appropriation account. These are estimated to be about $2.6 million in 1987, rising to about $7.5 million in fiscal year 1989.

[3] All estimates for Subtitle F, the Comphrehensive Oil Pollution Liability and Compensation Act, are identical to CBO's earlier estimate of H.R. 2817, the Superfund Amendments of 1985, as ordered reported by the House Committee on Public Works and Transportation on October 10, 1985, except for the following items: (1) credits for taxes paid into the Deepwater Port Liability or Offshore Oil Compensation funds are not transferrable in this bill, as they were in H.R. 1232, thus reducing the credits that might be expected to reduce revenues each year; (2) there is no $200 million fund balance ceiling set in this bill. Tax provisions would be in effect through October 1, 1990; and (3) the 1.3 cent fee is a tax rather than an insurance premium.

In 1987 only, CBO estimates that the Department of Transportation would spend an estimated $2 million in start-up costs. All ongoing administrative and clean-up costs are estimated to approximate those incurred under current oil spill statutes. The table includes no estimate for liability claims against the fund, as these are rare, unpredictable and difficult to estimate.

CBO has assumed that the tax on petroleum and the repeal of existing petroleum taxes would become effective 180 days after enactment, which is assumed to be October 1, 1986.

Note: Negative outlays denote a reduction in spending and a decrease in the deficit. Negative revenue figures denote a reduction in revenues and an increase in the deficit.

TABLE 2.—ESTIMATED BUDGET IMPACT OF RECONCILIATION PROVISIONS—CHANGE FROM RESOLUTION BASELINE ADJUSTED FOR ENACTED LEGISLATION

[By fiscal year, in millions of dollars]

	1987	1988	1989
Direct Spending			
Subtitle A—Highway program:			
Estimated budget authority	−1,783	−2,243	−2,724
Estimated outlays	−270	−1,040	−1,600
Subtitle B—Federal Energy Regulatory Commission annual charges:			
Estimated budget authority			
Estimated outlays			
Authorizations			
Subtitle C—Ocean dumping amendments:			
Estimated net authorization level [1]	−1	−6	−8
Estimated outlays	(*)	−4	−6
Subtitle F—Comprehensive oil pollution liability and compensation:			
Estimated authorization level	2		
Estimated outlays	2		
Revenues			
Tax on petroleum	35	69	70
Less:			
Credits	−5	−7	−3
Income tax offset	−7	−15	−17
Estimated net revenues	23	47	50

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* Less than $500,000.

[1] For the purpose of this estimate, the 1989 authorization was projected by inflating the 1988 authorized level, using baseline economic assumptions.

Note: Negative outlays denote a reduction in spending and a decrease in the deficit. Negative revenue figures denote a reduction in revenues and an increase in the deficit.

COST OF LEGISLATION

(1) Clause 7(a) of Rule XIII of the Rules of the House of Representatives requires a statement of the estimated costs to the United States which would be incurred in carrying out the recommendation as approved, in fiscal year 1986 and each of the following five years. However, under paragraph (d) of clause 7, its provisions do not apply when the Committee has received a timely report from the Congressional Budget Office.

(2) With reference to clause 2(l)(3)(D) of Rule XI of the Rules of the House of Representatives, the Committee has not received a report from the Committee on Government Operations pertaining to matters included in the recommendation.

(3) With reference to clause 2(l)(4) of Rule XI of the Rules of the House of Representatives, the following information is provided: The inflationary impact of carrying out the recommendation, as approved, should be minimal with respect to prices and costs in the operation of the national economy.

VOTE

In compliance with clause 2(l)(2)(A) of rule XI of the Rules of the House of Representatives, the Committee, by a voice vote, favorably approved the recommendation.

CHANGES IN EXISTING LAW, MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 23, UNITED STATES CODE

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CHAPTER 1—FEDERAL-AID HIGHWAYS

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§ 125. Emergency relief

(a) * * *

(b) The Secretary may expend funds from the emergency fund herein authorized for the repair or reconstruction of highways on the Interstate System, the Primary System, and on any routes functionally classified as arterials or major collectors, in accordance with the provisions of this chapter: *Provided,* That obligations for projects under this section, including those on highways, roads, and trails mentioned in subsection (c) of this section, resulting from a single natural disaster or a single catastrophic failure shall not exceed $30,000,000 [(and $55,000,000 for projects in connection with disasters or failures occurring in calendar year 1985)] ($55,000,000 for projects in connection with disasters or failures occurring in calendar year 1985 *$100,000,000 with respect to natural* *disasters and catastrophic failures occurring in calendar year 1986*) in any State. Notwithstanding any provision of this chapter actual and necessary costs of maintenance and operation of ferryboats providing temporary substitute highway traffic service, less the amount of fares charged, may be expended from the emergency fund herein authorized on the Interstate System, the Primary System, and on any routes functionally classified as arterials or major collectors. Except as to highways, roads, and trails mentioned in subsection (c) of this section, no funds shall be so expended unless the Secretary has received an application therefor from the State highway department, and unless an emergency has been declared by the Governor of the State and concurred in by the Secretary, except that if the President has declared such emergency to be a major disaster for the purposes of the Disaster Relief Act of 1974 (Public Law 93-288) concurrence of the Secretary is not required.

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§ 157. Minimum allocation

(a) * * *

(b) Amounts allocated pursuant to subsection (a) of this section shall be available for obligation when allocated for the year authorized plus the three succeeding fiscal years, shall be subject to the provisions of this title 23 and may be obligated for Interstate highway substitute, primary, secondary, Interstate, urban, bridge replacement and rehabilitation, hazard elimination, and rail-highway crossings projects. Obligation limitations for Federal-aid highways and highway safety construction programs established by this Act or any subsequent Act shall not apply to obligations made under this section, except where the provision of law establishing such limitation specifically amends or limits the applicability of this sentence. Sums allocated pursuant to this section shall not be considered to be sums allocated for purposes of section 104(b) of the Highway Improvement Act of 1982 and section 4102(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 *and section 8002(c) of the Omnibus Budget Reconciliation Act of 1986*.

MARINE PROTECTION, RESEARCH AND SANCTUARIES ACT OF 1972

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FINDING, POLICY, AND PURPOSE

SEC. 2. (a) * * *

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(c) It is the purpose of this Act to regulate (1) the transportation by any person of material from the United States and, in the case of United States vessels, aircraft, or agencies, the transportation of material from a location outside the United States, when in either case the transportation is for the purpose of dumping the material into ocean waters, and (2) the dumping of material transported by any person from a location outside the United States, if the dumping occurs in [territorial sea or the contiguous] *territorial sea or the exclusive economic* zone of the United States.

DEFINITIONS

SEC. 3. For the purposes of this Act the term—

(a) * * *

(b) "Ocean waters" means those waters, *and the subjacent area,* of the open seas lying seaward of the base line from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 5639).

(c) "Material" means matter of any kind or description, including, but not limited to, dredged material, solid waste, incinerator residue, garbage, sewage, [sewage] *municipal* sludge, munitions, radiological, chemical, and biological warfare agents, radioactive materials, chemicals, biological and laboratory waste, wreck or discarded equipment, rock, sand, excavation debris, and industrial, municipal, agricultural, and other waste; but such term does not mean sewage from vessels within the meaning of section 312 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321), shall be included only to the extent that such oil is taken on board a vessel or aircraft for the propose of dumping.

(d) "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico [the Canal Zone,] the territories and possession of the United States, and the Trust Territory of the Pacific Islands.

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(m) "Monitoring" means the systematic, time-series observation of materials, contaminants, or pertinent components of the marine ecosystem over a period of time sufficient to determine the existing levels, trends, and natural variations of measured components in the water column, sediments, and biota for the purpose of ensuring that immediate harmful effects of dumping are detected, and cumulative and long-term effects are detected, forecasted, and evaluated. Observations may include, but are not limited to, the following procedures, depending upon the type of waste to be dumped and the characteristics of the site: (1) seasonal sampling and analyses of the infaunal community and sediment for purposes of characterizing structural composition and size distribution; (2) sampling and analyses of sediment and selected organisms to determine levels of hydrocarbon, trace metals, and chemical and pathogenic contaminants identified as constituents of wastes to be dumped; (3) profiling measurements of standard oceanographic parameters including dissolved oxygen, salinity, and water temperature; (4) characterization of large-scale surface topography and megafaunal structure and composition; and (5) sampling and analyses to determine levels of nutrients and organic carbon.

(n) "Municipal sludge" means solid, semisolid, or liquid waste generated by a waste water treatment plant of a sewerage authority or other unit of State or local government or a privately owned or operated waste water treatment plant which treats predominantly domestic sewage.

(o) "exclusive economic zone" means the zone established by Proclamation Numbered 5030, dated March 10, 1983.

TITLE I—OCEAN DUMPING

PROHIBITED ACTS

SEC. 101. (a) * * *

[(b) Except as may be authorized by a permit issued pursuant to section 102 of this title, and subject to regulations issued pursuant to section 108 of this title, no person shall dump any material transported from a location outside the United States (1) into the territorial sea of the United States, or (2) into a zone contiguous to the territorial sea of the United States, extending to a line twelve nautical miles seaward from the base line from which the breadth of the territorial sea is measured, to the extent that it may affect the territorial sea or the territory of the United States.]

(b) Except as may be authorized by a permit issued pursuant to section 102 of this title, and subject to regulations issued pursuant to section 108 of this title, no person shall dump any material transported from a location outside the United States (1) into the territorial sea of the United States, or (2) into the exclusive economic zone of the United States.

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ENVIRONMENTAL PROTECTION AGENCY PERMITS

SEC. 102. (a) *(1)* Except in relation to dredged material, as provided for in section 103 of this title [, and in relation to radiological, chemical, and biological warfare agents and high-level radioactive waste, for which no permit may be issued,], *and except as provided in paragraphs (2) and (3),* the Administrator may issue permits, after notice and opportunity for public hearings, for the transportation from the United States, or in the case of an agency or instrumentality of the United States, or in the case of a vessel or aircraft registered in the United States or flying the United States flag, for the transportation from a location outside the United States, of material for the purpose of dumping it into ocean waters, or for the dumping of material into the waters described in section 101(b), where the Administrator determines that such dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. The Administrator shall establish and apply criteria for reviewing and evaluating such permit applications, and, in establishing or revising such criteria, shall consider, but not be limited in his consideration to, the following:

(A) * * *

* * * * * * *

(C) The effect of such dumping on fisheries resources, plankton, fish, shellfish, wildlife, shore lines [and beaches.] *beaches, and wetlands.*

* * * * * * *

In establishing or revising such criteria, the Administrator shall consult with Federal, State, and local officials, and interested members of the general public, as may appear appropriate to the Administrator. With respect to such criteria as may affect the civil works program of the Department of the Army, the Administrator shall also consult with the Secretary. In reviewing applications for permits, the Administrator shall make such provision for consultation with interested Federal and State agencies as he deems useful or necessary. No permit shall be issued for a dumping of material which will violate applicable water quality standards. [To the extent that he may do so without relaxing the requirements of this title, the Administrator, in establishing or revising such criteria, shall apply the standards and criteria binding upon the United States under the Convention, including its Annexes.]

(2) No permit may be issued under this title in relation to the following:

(A) Radiological, chemical, and biological warfare agents.

(B) High-level radioactive waste.

(3) No permits may be issued or renewed under this title that authorizes the dumping, or the transportation for purposes of dumping, after December 31, 1986, of municipal sludge, whether or not the sludge is subject to section 104A, unless—

(A) the sewerage authority or other unit of State or local government operating the plant at which the municipal sludge is generated is in compliance with those requirements of sections 307(b) and 402(b)(8) of the Federal Water Pollution Control Act (33 U.S.C. 1317(b) and 1342(b)(8)) which are related to the quality of municipal sludge; and

(B) the Administrator, in consultation with the Governor of the State in which the unit is located, finds that a suitable land-based alternative to the ocean disposal of the sludge is not currently available.

* * * * * * *

[(c) The Administrator may, considering the criteria established pursuant to subsection (a) of this section, designate recommended sites or times for dumping and, when he finds it necessary to protect critical areas, shall, after consultation with the Secretary, also designate sites or times within which certain materials may not be dumped.]

(c)(1) the Administrator shall designate sites at which materials may be dumped pursuant to this section and, after consultation with the Secretary, at which materials may be dumped pursuant to section 103; except that no site may be designated by the Administrator under this subsection until the Administrator undertakes and completes an analysis of the characteristics of the site and its suitability for dumping and of the environmental effects which will likely result from dumping. In undertaking such an analysis of each site, the Administrator shall take into consideration the factors set forth in subsection (a) and shall specifically take into accounting the following:

(A) The types and quantities of wastes and pollutants projected to be deposited in, and adjacent to, the site from dumping and other sources.

(B) The ability of the waters at the site to disperse, detoxify, or neutralize the materials.

(C) The importance of the site to the surrounding biological community, including the presence of breeding, spawning, nurs-

ery or foraging areas, migratory pathways, or areas necessary for other functions or critical stages in the life cycle of marine organisms.

(D) The immediate and cumulative effects on human health and on the ecosystem adjacent to the site and the persistent effects on the ecosystem within the site.

Nothing contained in this paragraph shall be construed to limit the authority of the Secretary under section 103 to make independent determinations regarding appropriate locations for dumping.

(2) The Administrator shall—

(A) periodically monitor, or cause to be monitored, the effects of the dumping of materials at or adjacent to each site for which the Administrator determines, on the basis of the characteristics of the site and the materials to be dumped, that such monitoring is necessary to accomplish the purposes of this title; and

(B) at the close of the third year after the site designation and at every three-year interval thereafter until such time as the designation is terminated, estimate the extent of the dumping and other waste inputs that will occur in and adjacent to each site during the next three-year period.

(3) If at any time the Administrator, on the basis of the factors taken into account under subparagraphs (A) through (D) of paragraph (1), or on the basis of the monitoring or estimates, required under paragraph (2), determines that the site is no longer suitable for such dumping, the Administrator shall—

(A) limit dumping at the site to certain materials or at certain times or both; or

(B) suspend or terminate the designation of the site under paragraph (1).

In making a determination under the preceding sentence that a site is no longer suitable for dumping pursuant to section 103, the Administrator shall consult the Secretary.

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(f) No funds authorized under this title may be used to finance, in whole or in part, the dumping of material or the transportation of material for the purpose of dumping, as authorized under this section.

DUMPING OF HARMFUL MUNICIPAL SLUDGE AND INDUSTRIAL WASTE

Sec. 102A. (a) The Administrator shall—

(1) end the dumping of harmful municipal sludge into ocean waters and into waters described in section 101(b) as soon as possible after the date of the enactment of this section, except that in no case may any dumping of harmful municipal sludge—

(A) occur after the last day of the eighteen-month period beginning on such date of enactment; or

(B) be authorized under this title for other than an eligible authority within the meaning of section 104A(a)(1)(C); and

(2) end the dumping of industrial waste into such waters, except as provided in subsections (b) and (c).

(b) On and after the date of the enactment of this section, the Administrator may issue permits under section 102 for the dumping of industrial waste into ocean waters, or into waters described in section 101(b), if the Administrator determines—

(1) that the proposed dumping is necessary to conduct research—

(A) on new technology related to ocean dumping, or

(B) to determine whether the dumping of such substance will unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities;

(2) that the scale of the proposed dumping is such that the dumping will have minimal adverse impact upon the human health, welfare, and amenities, and the marine environment, ecological systems, and economic potentialities; and

(3) after consultation with the Secretary of Commerce, that the potential benefits of such research will outweigh any such adverse impact.

Each permit issued pursuant to this subsection shall be subject to such conditions and restrictions as the Administrator determines to be necessary to minimize possible adverse impacts of such dumping. No permit issued by the Administrator pursuant to this subsection may have an effective period of more than six consecutive months.

(c) On and after the date of the enactment of this section, the Administrator may issue emergency permits under section 102 for the dumping of industrial waste into ocean waters, or into waters described in section 101(b), if the the Administrator determines that there has been demonstrated to exist an emergency, requiring the dumping of such waste, which poses an unacceptable risk relating to human health and admits of no other feasible solution. As used in this subsection, the term "emergency" refers to situations requiring action with a marked degree of urgency.

(d) For purposes of this section—

(1) The term "harmful municipal sludge" means municipal sludge (as defined in section 3(n)) the ocean dumping of which may be harmful to human health, welfare, amenities, or the marine environment, ecological systems, and economic potentialities. Municipal sludge shall be considered to be harmful, for purposes of this section, if it fails to meet the environmental impact criteria of the Environmental Protection Agency's regulations issued under this title.

(2) The term "industrial waste" means any solid, semisolid, or liquid waste generated by a manufacturing or processing plant the ocean dumping of which may unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, and economic potentialities.

CORPS OF ENGINEERS PERMITS

SEC. 103. (a) * * *

(b) In making the determination required by subsection (a), the Secretary shall apply those criteria, established pursuant to section

102(a), relating to the effects of the dumping. Based upon an evaluation of the potential effect of a permit denial on navigation, economic and industrial development, and foreign and domestic commerce of the United States, the Secretary shall make an independent determination as to the need for the dumping. The Secretary shall also make an independent determination as to other possible methods of disposal and as to appropriate locations for the dumping. [In considering appropriate locations, he shall, to the extent feasible, utilize the recommended sites designated by the Administrator pursuant to section 102(c).] *In conducting the independent determination under the preceding sentence, the Secretary shall consider the relative environmental impact of, and shall give equal treatment to, all alternative forms of disposal. In considering appropriate locations, he shall, to the extent feasible, utilize the recommended sites designated by the Administrator pursuant to section 102(c). The Secretary in consultation with the Administrator shall be responsible for management, including appropriate monitoring, of sites utilized pursuant to this section.*

* * * * * * *

PERMIT CONDITIONS

SEC. 104. [(a) Permits issued under this title shall designate and include (1) the type of material authorized to be transported for dumping or to be dumped; (2) the amount of material authorized to be transported for dumping or to be dumped; (3) the location where such transport for dumping will be terminated or where such dumping will occur; (4) the length of time for which the permits are valid and their expiration date; (5) any special provisions deemed necessary by the Administrator or the Secretary, as the case may be, after consultation with the Secretary of the Department in which the Coast Guard is operating, for the monitoring and surveillance of the transportation or dumping; and (6) such other matters as the Administrator or the Secretary, as the case may be, deems appropriate.]

(a) Permits issued under this title shall designate and include—

(1) the type of material authorized to be transported for dumping or to be dumped;

(2) the amount of material authorized to be transported for dumping or to be dumped;

(3) the location where such transport for dumping will be terminated or where such dumping will occur;

(4) the length of time for which the permits are valid and their expiration date;

(5) any special provisions deemed necessary by the Administrator or the Secretary, as the case may be, to minimize the harm from dumping, which may include measures that the permittee must take to plan, develop, acquire, or implement, as appropriate—

(A) alternatives for the disposal of the material,

(B) processes for reducing or eliminating any contaminants in the material, or

(C) processes for recycling the material;

(6) after consultation with the Secretary of the Department in which the Coast Guard is operating, any special provisions deemed necessary by the Administrator or the Secretary, as the case may be, for the monitoring and surveillance of the transportation or dumping; and

(7) such other matters as the Administrator or the Secretary, as the case may be, deems appropriate.

[(b) The Administrator or the Secretary, as the case may be, may prescribe such processing fees for permits and such reporting requirements for actions taken pursuant to permits issued by him under this title as he deems appropriate.]

(b)(1) The Administrator or the Secretary, as the case maybe, shall prescribe by regulation and collect from the applicant, unless the applicant is a Federal agency, an application fee in an amount, not to exceed $10,000, that is commensurate with the reasonable administrative costs incurred or expected to be incurred by the Administrator or Secretary in processing the permit. The application fee shall be deposited to the principal appropriation account or accounts used to carry out the processing of permits under this title.

(2)(A) The Administrator shall prescribe by regulation, after opportunity for a hearing on the record, and collect a special fee for permits issued under section 102 to recover the costs incurred, or expected to be incurred, in the undertaking of measures by Federal agencies to determine compliance with permit terms, and undertaking of only the monitoring necessary to make a reasonable assessment of the direct effects on the marine environment caused by disposal activities carried out under the permit. Such fee shall be an amount which will not have a substantial adverse effect on the competitive prospects for commercial implementation of effective and efficient ocean-based waste destruction technologies that otherwise meet the requirements of law. The special fee shall be deposited to the principal appropriation account or accounts used to carry out site and compliance monitoring, surveillance, and enforcement activities.

(B) The funds collected under subparagraph (A) may be transferred in part to other Federal agencies for the costs incurred or expected to be incurred in connection with their activities described in subparagraph (A).

(3) The expenditure of funds raised by these fees shall be subject to appropriations.

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(e) *(1)* The Administrator or the Secretary, as the case may be, shall require an applicant for a permit under this title to provide such information as he may consider necessary to review and evaluate such application.

(2) The Administrator and the Secretary shall establish and maintain quality assurance programs to ensure the validity, accuracy, and sufficiency of information submitted to or used by the Administrator or the Secretary in connection with applications for permits or other activities undertaken pursuant to this title. Such quality assurance programs shall encompass, but not be limited to, the design, implementation, and analysis of sampling, testing, and monitoring procedures and results. The Administrator and the Secretary

shall each individually report annually, as a part of the report required under section 112 of this title, on the status of implementation of this subsection; except that the first such quality assurance reporting shall be submitted to the Congress no later than one year after the effective date of this subsection.

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(j) The Administrator or Secretary, as the case may be, may prescribe such reporting requirements as he or she deems appropriate with regard to actions authorized by permits issued under this title.

SPECIAL PROVISIONS REGARDING CERTAIN DUMPING SITES

SEC. 104A. (a) NEW YORK BIGHT APEX.—(1) For purposes of this subsection:

(A) The term "Apex" means the New York Bight Apex consisting of the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and northward of 40 degrees 10 minutes north latitude.

(B) The term "Apex site" means that site within the Apex at which the dumping of municipal sludge occurred before October 1, 1983.

(C) The term "eligible authority" means any sewerage authority or other unit of State or local government that on November 2, 1983, was authorized under court order to dump municipal sludge at the Apex site.

(2) No person may apply for a permit under this title in relation to the dumping of, or the transportation for purposes of dumping, municipal sludge within the Apex unless that person is an eligible authority.

(3) The Administrator may not issue, or renew, any permit under this title that authorizes the dumping of, or the transportation for purposes of dumping, municipal sludge within the Apex after the earlier of—

(A) December 15, 1987; or

(B) the day determined by the Administrator to be the first day on which municipal sludge generated by eligible authorities can reasonably be dumped at a site designated under section 102 other than a site within the Apex.

(4)(A) Within three years after the date of the enactment of this section, the Administrator shall prepare and submit to the Congress a New York Bight Apex Restoration Plan. In preparing the plan, the Administrator shall hold public hearings in order to obtain the views and comments of interested persons.

(B) The New York Bight Apex Restoration Plan required under subparagraph (A) shall—

(i) identify and assess the impact of pollutant inputs, such as treated and untreated sewage discharge, industrial outfalls, agricultural and urban runoff, storm sewer overflow, upstream contaminant sources, atmospheric fallout, and dumping that are affecting the water quality and marine resources of the Apex;

(ii) identify those uses in the Apex that are being inhibited because of those inputs;

(iii) determine the fate of the contaminants from those inputs and their effect on the marine environment;

(iv) identify technologies and management practices, and determine the costs, necessary to control those inputs;

(v) identify impediments to the cleanup of those inputs;

(vi) devise a schedule of economically feasible projects to implement the controls identified under clause (iv) and to remove the impediments identified under clause (v); and

(vii) develop recommendations for funding and coordinating various Federal, State, and local government programs necessary to implement the projects devised under clause (vi).

Within six months after the date of the enactment of this section, the Administrator shall submit to the Congress a detailed schedule (and the associated funding requirements) for completing the restoration plan required by this paragraph.

(5) Within one year after the date of the enactment of this section, the Administrator shall prepare and submit to Congress a report on the technological and economic feasibility of establishing and implementing quality standards for disposal of municipal sludge through ocean or land-based methods. The quality standards shall set forth maximum permissible concentrations of heavy metals, PCB's, persistent plastics, microbiological constituents, pathogens, and any other material found in municipal sludge regarding which the Administrator considers the establishment of maximum permissible concentrations to be warranted.

(6) In addition to funds authorized under section 111, there are authorized to be appropriated to the Environmental Protection Agency, for purposes of preparing the New York Bight Apex Restoration Plan required under paragraph (4)(A), the following amounts:

(A) $2,000,000 for fiscal year 1986.

(B) $2,000,000 for fiscal year 1987.

(C) $1,000,000 for fiscal year 1988.

(b) RESTRICTION ON USE OF THE 106-MILE SITE.—The Administrator may not issue or renew any permit under this title which authorizes any person, other than a person that is an eligible authority within the meaning of subsection (a)(1)(C), to dump, or to transport for the purposes of dumping, municipal sludge within the site designated under section 102(c) by the Administrator and known as the "106-Mile Ocean Waste Dump Site" (as described in 49 F.R. 19005).

PENALTIES

SEC. 105. (a) * * *

(b)*(1)* In addition to any action which may be brought under subsection (a) of this section, a person who knowingly violates this title, regulations promulgated under this title, or a permit issued under this title shall be fined not more than $50,000, or imprisoned for not more than one year, or both. *Any action authorized by this section shall be consistent with international law.*

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this title or who falsifies, tampers with, or knowingly renders inaccurate any monitoring, sampling, or testing device or method required to be

maintained or implemented under this title, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both. For purposes of this section, the term "person" shall mean, in addition to the definition contained in section 3(e) of this title, any responsible corporate officer.

* * * * * * *

(g)(1) * * *

* * * * * * *

(5) Upon application of any person, the district courts of the United States shall have jurisdiction to order the Administrator to implement in a timely manner the site designation provisions of this title for those sites for which site designation proceedings are incomplete and at which dumping is authorized pursuant to permits issued under sections 102 and 103. Nothing in this paragraph is intended to affect the conduct of any dumping activity under a permit issued under this title pending the completion of site designation proceedings. Paragraph (4) of this subsection shall not apply to any suit brought pursuant to this paragraph.

[5**]** *(6)* The **[**injunctive**]** relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Administrator, the Secretary, or a State agency).

* * * * * * *

RELATIONSHIP TO OTHER LAWS

SEC. 106. (a) * * *

* * * * * * *

(g) To the extent that they may do so without relaxing the requirements of this title, and in accordance with chapter 5 of title 5, United States Code, the Administrator and the Secretary shall adhere to and apply the requirements of the Convention, including its annexes, that are binding upon the United States when implementing this title.

(h) Nothing in this Act shall affect or modify the rights or liabilities of any person under other Federal law with respect to damage caused by noncompliance with any requirement of this Act or any permit issued under this Act.

SEC. 111. There are hereby authorized to be appropriated not to exceed $3,600,000 for fiscal year 1973, not to exceed $5,500,000 for each of the fiscal years 1974 and 1975, not to exceed $5,300,000 for fiscal year 1976, not to exceed $1,325,000 for the transition period (July 1 through September 30, 1976), not to exceed $4,800,000 for fiscal year 1977, not to exceed $4,800,000 for fiscal year 1978, not to exceed $2,000,000 for each of fiscal year 1980, fiscal year 1981, **[**and**]** not to exceed $4,213,000 for fiscal year 1982, *and not to exceed $8,864,000 for each of fiscal years 1986, 1987, and 1988,* for the purposes and administration of this title, and for succeeding fiscal years only such sums as the Congress may authorize by law.

[SEC. 112. The Administrator shall on or before February 1 of each year report to the Congress on the administration of this title during the preceding fiscal year, including recommendations for additional legislation if deemed necessary.]

SEC. 112. In March of each year, the Administrator and the Secretary shall each individually report to the Congress on the administration of this title during the previous calendar year.

* * * * * * *

SECTION 4 OF THE ACT OF NOVEMBER 4, 1977

To amend the Marine Protection, Research, and Sanctuaries Act of 1972 to authorize appropriations to carry out the provisions of such Act for fiscal year 1978.

[SEC. 4. (a) The Administrator of the Environmental Protection Agency (hereinafter referred to in this section as the "Administrator") shall end the dumping of sewage sludge and industrial waste into ocean waters, or into waters described in section 101(b) of the Marine Protection, Research, and Sanctuaries Act of 1972, as soon as possible after the date of enactment of this section, but, except as provided in subsections (b) and (c), in no case may the Administrator issue any permit, or any renewal thereof (under title I of such Act of 1972) which authorizes any such dumping after December 31, 1981.

[(b) After December 31, 1981, the Administrator may issue permits under such title I for the dumping of industrial waste into ocean waters, or into waters described in such section 101(b), if the Administrator determines—

[(1) that the proposed dumping is necessary to conduct research—

[(A) on new technology related to ocean dumping, or

[(B) to determine whether the dumping of such substance will unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities;

[(2) that the scale of the proposed dumping is such that the dumping will have minimal adverse impact upon the human health, welfare, and amenities, and the marine environment, ecological systems, and economic potentialities; and

[(3) after consultation with the Secretary of Commerce, that the potential benefits of such research will outweigh any such adverse impact.

Each permit issued pursuant to this subsection shall be subject to such conditions and restrictions as the Administrator determines to be necessary to minimize possible adverse impacts of such dumping. No permit issued by the Administrator pursuant to this subsection may have an effective period of more than six consecutive months.

[(c) After December 31, 1981, the Administrator may issue emergency permits under such title I for the dumping of industrial waste into ocean waters, or into waters described in such section 101(b), if the Administrator determines that there has been demonstrated to exist an emergency, requiring the dumping of such waste, which poses an unacceptable risk relating to human health and admits of no other feasible solution. As used herein, "emergency" refers to situations requiring action with a marked degree of urgency.

[(d) For purposes of this section—

[(1) the term "sewage sludge" means any solid, semisolid, or liquid waste generated by a municipal wastewater treatment plant the ocean dumping of which may unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, and economic potentialities; and

[(2) the term "industrial waste" means any solid, semisolid, or liquid waste generated by a manufacturing or processing plant the ocean dumping of which may unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, and economic potentialities.]

SECTION 10 OF THE ACT OF DECEMBER 22, 1944

Authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes.

SEC. 10. * * *

SAN JOAQUIN RIVER

The project for the Isabella Reservoir on the Kern River for flood control and other purposes in the San Joaquin Valley, California, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in his report dated January 26, 1944, contained in House Document Numbered 513, Seventy-eighth Congress, second session, at an estimated cost of $6,800,000.

The plan for the Terminus and Success Reservoirs on the Kaweah and Tule Rivers for flood control and other purposes in the San Joaquin Valley, California, in accordance with the recommendations of the Chief of Engineers in Flood Control Committee Document Numbered 1, Seventy-eighth Congress, second session, is approved, and there is hereby authorized $4,600,000 for initiation and partial accomplishment of the plan.

The project for flood control and other purposes for the Kings River and Tulare Lake Basin, California, is hereby authorized substantially in accordance with the plans contained in House Document Numbered 630, Seventy-sixth Congress, third session, with such modifications thereof as in the discretion of the Secretary of War and the Chief of Engineers may be advisable at an estimated cost of $19,700,000: *Provided,* That the conditions of local cooperation specified in said document shall not apply: *Provided further,* That the Secretary of War shall make arrangements for payment to the United States by the State or other responsible agency, either in lump sum or annual installments, for conservation storage when used: *Provided further,* That the division of costs between flood control, and irrigation and other water uses shall be determined by the Secretary of War on the basis of continuing studies by the Bureau of Reclamation, the War Department, and the local organizations. *The Secretary is authorized to undertake further studies for engineering and design with appropriate non-Federal sponsors for a project not to exceed 200,000 acre feet of additional flood control and other storage benefits at the existing facility and not to exceed 800,000 acre feet of additional flood control and other storage benefits to alleviate flood and irrigation problems that exist in the existing service area and to report on such study to Congress.*

* * * * * * *

AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1982

* * * * * * *

SEC. 533. ADJUSTMENTS OF AUTHORIZATIONS AND APPORTIONMENTS.

(a) ESTIMATES OF UNFUNDED AVIATION AUTHORIZATIONS AND NET AVIATION RECEIPTS.—Not later than March 31 of each year, the Secretary of Transportation, in consultation with the Secretary of the Treasury, shall estimate—

(1) the amount which would (but for this section) be the unfunded aviation authorizations at the close of the next fiscal year, and

(2) the net aviation receipts for the 24-month period beginning at the close of such fiscal year.

(b) PROCEDURE WHERE THERE IS EXCESS UNFUNDED AVIATION AUTHORIZATIONS.—If the Secretary of Transportation determines for any fiscal year that the amount described in subsection (a)(1) exceeds the amount described in subsection (a)(2), the Secretary shall determine the amount of such excess.

(c) ADJUSTMENT OF AUTHORIZATIONS WHERE UNFUNDED AUTHORIZATIONS EXCEED 2 YEARS' RECEIPTS.—

(1) DETERMINATION OF PERCENTAGE.—If the Secretary of Transportation determines that there is an excess referred to in subsection (b), the Secretary of Transportation shall determine the percentage which—

(A) such excess, is of

(B) the total of the amounts authorized to be appropriated and the amounts available for obligation from the Airport and Airway Trust Fund for the next fiscal year.

(2) ADJUSTMENT OF AUTHORIZATIONS.—If the Secretary of Transportation determines a percentage under paragraph (1), each amount authorized to be appropriated or available for obligation from the Airport and Airway Trust Fund for the next fiscal year shall be reduced by such percentage.

(d) AVAILABILITY OF AMOUNTS PREVIOUSLY WITHHELD.—If, after an adjustment has been made under subsection (c)(2), the Secretary of Transporation determines that the amount described in subsection (a)(1) does not exceed the amount described in subsection (a)(2) or that the excess referred to in subsection (b) is less than the amount previously determined, each amount authorized to be appropriated or available for obligation that was reduced under subsection (c)(2) shall be increased, by an equal percentage, to the extent the Secretary of Transportation determines that it may be so increased without causing the amount described in subsection (a)(1) to exceed the amout described in subsection (a)(2) (but not by more

than the amount of the reduction). The Secretary of Transportation shall apportion amounts made available for apportionment by reason of the preceding sentence. Any funds apportioned pursuant to the preceding sentence shall remain available for the period for which they would be available if such apportionment took effect with the fiscal year in which they are apportioned pursuant to the preceding sentence.

(e) Definitions.—For purposes of this section—

(1) Unfunded aviation authorizations.—The term "unfunded aviation authorizations" means, at any time, the excess (if any) of—

(A) the total amount authorized to be appropriated or available for obligation from the Airport and Airway Trust Fund which has not been appropriated or obligated, over

(B) the amount available in the Airport and Airway Trust Fund at such time to make such appropriations or to liquidate such obligations (after all other unliquidated obligations at such time which are payable from the Airport and Airway Trust Fund have been liquidated).

(2) Net aviation receipts.—The term "net aviation receipts" means, with respect to any period, the excess of—

(A) the receipts (including interest) of the Airport and Airway Trust Fund during such period, over

(B) the amounts to be transferred during such period from such Fund under section 9502(d) of the Internal Revenue Code of 1954 (other than paragraph (1) thereof).

(f) Reports.—Any estimate under subsection (a) and any determination under subsection (b), (c), or (d) shall be reported by the Secretary of Transportation to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, the Committee on Public Works and Transportation of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate.

Section 225 of the Balanced Budget and Emergency Deficit Control Act of 1985

SEC. 255. EXEMPT PROGRAMS AND ACTIVITIES.

(a) * * *

* * * * * * *

(g) Other Programs and Activities.—

(1) The following budget accounts and activities shall be exempt from reduction under any order issued under this part:

Activities resulting from private donations, bequests, or voluntary contributions to the Government;

Airport and Airway Trust Fund (69-8106-0-7-402; 69-8107-0-7-402; 60-8108-0-7-402; 69-8104-0-7-402);

* * * * * * *

Health professions graduate student loan insurance fund (Health Education Assistance Loan Program) (75-4305-0-3-553);

Highway Trust Fund (20-8102-0-7-401; 69-8019-0-7-401; 69-8020-0-7-401; 69-8099-0-7-401);

Inland Waterways Trust Fund (20-8861-0-7-301);

* * * * * * *

CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT OF 1974

* * * * * * *

DEFINITIONS

SEC. 3. IN GENERAL.—For purposes of this Act—

(1) * * *

(6) The term "deficit" means, with respect to any fiscal year, the amount by which total budget outlays for such fiscal year exceed total revenues for such fiscal year. In calculating the deficit for purposes of comparison with the maximum deficit amount under the Balanced Budget and Emergency Deficit Control Act of 1985 and in calculating the excess deficit for purposes of sections 251 and 252 of such Act (notwithstanding section 710(a) of the Social Security Act), for any fiscal year, the receipts of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund for such fiscal year and the taxes payable under sections 1401(a), 3101(a), and 3111(a) of the Internal Revenue Code of 1954 during such fiscal year shall be included in total revenues for such fiscal year, and the disbursements of each such Trust Fund for such fiscal year shall be included in total budget outlays for such fiscal year. *In calculating the deficit for purposes of comparison with the maximum deficit amount under the Balanced Budget and Emergency Deficit Control Act of 1985 and in calculating the excess deficit for purposes of sections 251 and 252 of such Act of 1985 (notwithstanding section 8401(a) of the Omnibus Budget Reconciliation Act of 1986) for any fiscal year, the receipts of the Highway Trust Fund (including the Mass Transit Account), the Airport and Airway Trust Fund, and the Inland Waterways Trust Fund allocable to the transportation-related operations of each such Trust Fund for such fiscal year shall be included in total revenues for such fiscal year, and the disbursements allocable to the transportation-related operations of each such Trust Fund for such fiscal year shall be included in total budget outlays for such fiscal year. For purposes of the preceding sentence, the receipts and disbursements allocable to the transportation-related operations of such Trust Funds shall be those described in section 8401(b) of the Omnibus Budget Reconciliation Act of 1986.* Notwithstanding any other provision of law except to the extent provided by section 710(a) of the Social Security Act, the receipts, revenues, disbursements, budget authority, and outlays of each off-budget Federal entity for a fiscal year shall be included in total budget authority, total budget outlays, and total revenues and the amounts of budget authority and outlays set forth for each major functional category, for such fiscal year. Amounts paid by the Federal Financing Bank for the purchase of loans made

or guaranteed by a department, agency, or instrumentality of the Government of the United States shall be treated as outlays of such department, agency, or instrumentality.

* * * * * * *

TITLE III—CONGRESSIONAL BUDGET PROCESS

* * * * * * *

RECONCILIATION

SEC. 310. (a) * * *

* * * * * * *

(h) LIMITATION ON CHANGES TO THE HIGHWAY, AIRPORT AND AIRWAY, AND INLAND WATERWAYS TRUST FUNDS.—Notwithstanding any other provision of law, it shall not be in order in the Senate or the House of Representatives to consider—

(1) any concurrent resolution on the budget for any fiscal year, or any amendment thereto or conference report thereon, that assumes or contains in the aggregate totals or functional categories provided for by section 301(a) any amount of budget authority or budget outlays from the Highway Trust Fund, the Airport and Airway Trust Fund, or the Inland Waterways Trust Fund,

(2) any concurrent resolution on the budget for any fiscal year, or any amendment thereto or conference report thereon, that contains reconciliation instructions with respect to the Highway Trust Fund, the Airport and Airway Trust Fund, or the Inland Waterways Trust Fund, or

(3) any reconciliation bill or reconciliation resolution reported pursuant to a concurrent resolution on the budget agreed to under section 301 or 304, or a resolution pursuant to section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985, or any amendment thereto or conference report thereon, that contains recommendations with respect to the Highway Trust Fund, the Airport and Airway Trust Fund, or the Inland Waterways Trust Fund.

* * * * * * *

SECTION 221 OF THE HAZARDOUS SUBSTANCE RESPONSE REVENUE ACT OF 1980

SEC. 221. ESTABLISHMENT OF HAZARDOUS SUBSTANCE RESPONSE TRUST FUND.

(a) * * *

* * * * * * *

(b) TRANSFERS TO RESPONSE TRUST FUND.—

(1) AMOUNTS EQUIVALENT TO CERTAIN TAXES, ETC.—There are hereby appropriated, out of any money in the Treasury not otherwise appropriated, to the Response Trust Fund amounts determined by the Secretary of the Treasury (hereinafter in

this subtitle referred to as the "Secretary") to be equivalent to—

(A) the amounts received in the Treasury under section 4611 or 4661 of the Internal Revenue Code of 1954,

(B) the amounts recovered on behalf of the Response Trust Fund under this Act,

(C) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act,

(D) penalties assessed under title I of this Act, and

(E) punitive damages under section 107(c)(8) of this Act.

In the case of the tax imposed by section 4611, subparagraph (A) shall apply only to so much of such tax as is attributable to the Superfund financing rate under section 4611(c).

SECTION 17 OF THE INTERVENTION ON THE HIGH SEAS ACT

[SEC. 17. The revolving fund established under section 311(k) of the Federal Water Pollution Control Act shall be available to the Secretary for Federal actions and activities under section 5 of this Act.]

SEC. 17. The Oil Spill Liability Trust Fund established under section 9505 of the Internal Revenue Code of 1954 shall be available to the Secretary for actions and activities relating to oil pollution (as defined in section 8501 of the Comprehensive Oil Pollution Liability and Compensation Act), or the substantial threat of oil pollution, taken under section 5 of this Act.

FEDERAL WATER POLLUTION CONTROL ACT

* * * * * * *

TITLE III—STANDARDS AND ENFORCEMENT

* * * * * * *

OIL AND HAZARDOUS SUBSTANCE LIABILITY

SEC. 311. (a) For the purpse of this section, the term—

(1) * * *

* * * * * * *

(17) "Otherwise subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided for by international agreement to which the United States is a party[.]*;*

(18) "person in charge" means the individual immediately responsible for the operation of a vessel or facility.

* * * * * * *

(b)(1) * * *

* * * * * * *

(5) Any person in charge of a vessel or of an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge of oil or a hazardous substance from such vessel or facility

in violation of paragraph (3) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge. Any such person *(A) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, or (B) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) of this subsection and who is otherwise subject to the jurisdiction of the United States* at the time of the discharge, *or (C) in charge of an onshore facility or an offshore facility,* who fails to notify immediately such agency of such discharge shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person *or his employer* in any criminal case, except a prosecution for perjury or for giving a false statement.

(6)(A) Any owner, *operator, [or person in charge] person in charge, or employer of such person in charge of any* onshore facility or offshore facility from which oil or a hazardous substance is discharged in violation of paragraph (3) of this subsection shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense. *Any owner, operator, [or person in charge] person in charge, or employer of such person in charge of any vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, and any owner, operator, [or person in charge] person in charge, or employer of such person in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) who is otherwise subject to the jurisdiction of the United States* at the time of the discharge, *shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense.* No penalty shall be assesed unless [the owner or operator] *whoever being* charged shall have been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. Any such civil penalty may be compromised by such Secretary. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation, shall be considered by such Secretary. The Secretary of the Treasury shall withhold at the request of such Secretary the clearance required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91), of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to such Secretary.

* * * * * * *

(B) The Administrator, taking into account the gravity of the offense, and the standard of care manifested by the owner, operator, [or person in charge] *person in charge, or employer of such person in charge* may commence a civil action against any such person subject to the penalty under subparagraph (A) of this paragraph to impose a penalty based on consideration of the size of the business of the owner or operator, the effect on the ability of the owner or operator to continue in business, the gravity of the violation, and the nature, extent, and degree of success of any efforts made by the owner, operator, [or person in charge] *person in charge, or employer of such person in charge* to minimize or mitigate the effects of such discharge. The amount of such penalty shall not exceed $50,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, operator [or person in charge] *person in charge, or employer of such person in charge* such penalty shall not exceed $250,000. Each violation is a separate offense. Any action under this subparagraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to assess such penalty. No action may be commenced under this clause where a penalty has been assessed under clause (A) of this paragraph.

* * * * * * *

(c)(1) * * *

(2) Within sixty days after the effective date of this section, the President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances, pursuant to this subsection. Such National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and removal of oil and hazardous substances, and shall include, but not be limited to—

(A) * * *

* * * * * * *

(H) a system whereby the State or States affected by a discharge of oil or hazardous substance may act where necessary to remove such discharge and such State or States may be reimbursed [from the fund established under subsection (k) of this section for the reasonable costs incurred in such removal] *, in the case of any discharge of oil from a vessel or facility, for the reasonable costs incurred in such removal from the Oil Spill Liability Trust Fund*

* * * * * * *

(d) Whenever a marine disaster in or uon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and the public and private shorelines and beaches of the United States, because of a discharge, or an imminent discharge, of large quantities of oil, or of a hazardous substance from a vessel the United States may (A) coordinate and direct all public and private efforts directed at the removal or elimination of such threat; and (B) summarily remove, and, if necessary, destroy such vessel by whatever means are available without regard to any provisions of law governing the employment of personnel or the expenditure of appropriated funds. [Any expense incurred under this subsection *or under the Intervention* *on the High Seas Act (or the convention defined in section 2 (3) thereof)* shall be a cost incurred by the United States Government for the purposes of subsection (f) in the removal of oil or hazardous substance.]

* * * * * * *

(i) [(1)] In any case where an owner or operator of a vessel or an onshore facility or an offshore facility from which oil or a hazardous substance is discharged in violation of subsection (b) (3) of this section acts to remove such oil or substance in accordance with regulations promulgated pursuant to this section, such owner or operator shall be entitled to recover the reasonable costs incurred in such removal upon establishing, in a suit which may be brought against the United States Government in the United States Claims Court, that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether such act or omission was or was not negligent, or of any combination of the foregoing clauses.

[(2) The provisions of this subsection shall not apply in any case where liability is established pursuant to the Outer Continental Shelf Lands Act, *or the Deepwater Port Act of 1974.*

[(3) Any amount paid in accordance with a judgment of the United States Court of Claims pursuant to this section shall be paid from the funds established pursuant to subsection (k).]

* * * * * * *

[(k)(1) There is hereby authorized to be appropriated to a revolving fund to be established in the Treasury *such sums as may be necessary to maintain such fund at a level of* $35,000,000 to carry out the provisions of subsections (c), (d), (i), and (l) of this section. Any other funds received by the United States under this section shall also be deposited in said fund for such purposes. All sums appropriated to or deposited in, said fund shall remain available until expended.

(2) The Secretary of Transportation shall notify the Congress whenever the unobligated balance of the fund is less than $12,000,000, and shall include in such notification a recommendation for a supplemental appropriation relating to the sums that are needed to maintain the fund at the level provided in paragraph (1).]

(l) The President is authorized to delegate the administration of this section to the heads of those Federal departments, agencies, and instrumentalities which he determines to be appropriate. [Any moneys in the fund established by subsection (k) of this section shall be available to such Federal departments, agencies, and instrumentalities to carry out the provisions of subsections (c) and (i) of this section.] Each such department, agency, and instrumentality, in order to avoid duplication of effort, shall, whenever appropriate, utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities.

* * * * * * *

[(p)(1) Any vessel over three hundred gross tons, including any barge of equivalent size, but not including any barge that is not self-propelled and that does not carry oil or hazardous substances as cargo or fuel, using any port or place in the United States or the navigable waters of the United States for any purpose shall establish and maintain under regulations to be prescribed from time to time by the President, evidence of financial responsibility of, *in the case of an inland oil barge $125 per gross ton of such barge, or $125,000, whichever is greater, and in the case of any other vessel, $150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo. $250,000), whichever is greater,* to meet the liability to the United States which such vessel could be subjected under this section. In cases where an owner or operator owns, operates, or charters more than one such vessel, financial responsibility need only be established to meet the maximum liability to which the largest of such vessel could be subjected. Financial responsibility may be established by any one of, or a combination of, the following methods acceptable to the President: (A) evidence of insurance, (B) surety bonds, (C) qualification as a self-insurer, or (D) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

[(2) The provisions of paragraph (1) of this subsection shall be effective April 3, 1971, with respect to oil and one year after the date of enactment of this section with respect to hazardous substances. The President shall delegate the responsibility to carry out the provisions of this subsection to the appropriate agency within sixty days after the date of enactment of this section. Regulations necessary to implement this subsection shall be issued withn six months after the date of enactment of this section.

[(3) Any claim for costs incurred by such vessel may be brought directly against the insurer or any other person providing evidence of financial responsibility as required under this subsection. In the case of any action pursuant to this subsection such insurer or other person shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against him by the claimant, and which would have been available to him if an action had been brought against him by the owner or operator.

[(4) Any owner or operator of a vessel subject to this subsection, who fails to comply with the provisions of this subsection or any regulation issued thereunder, shall be subject to a fine or not more than $10,000.

[(5) The Secretary of the Treasury may refuse the clearance required by section 4197 of the Revised Statutes of the United States, as amended (4 U.S.C. 91), to any vessel subject to this subsection, which does not have evidence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

[(6) The Secretary of the Department in which the Coast Guard is operated may (A) deny entry to any port or place in the United States or the navigable waters of the United States, to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection, which upon request, does not produce evidence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.]

* * * * * * *

(s) The Oil Spill Liability Trust Fund shall be available to carry out subsections (c), (d), (i), and (1) as those subsections relate to discharges of oil. Any amounts received by the United States under this section with respect to claims arising on or after the effective date of this subsection shall be deposited in the Oil Spill Liability Trust Fund.

DEEP WATER PORT ACT OF 1974

* * * * * * *

LICENSE FOR THE OWNERSHIP, CONSTRUCTION, AND OPERATION OF A DEEPWATER PORT

SEC. 4. (a) * * *

* * * * * * *

(c) The Secretary may issue a license in accordance with the provisions of this Act if—

(1) he determines that the applicant is financially responsible and will meet the requirements of [section 18(l) of this Act], *section 8505 of the Comprehesive Oil Pollution Liability and Compensation Act;*

* * * * * * *

LIABILITY

SEC. 18. (a)(1) * * *

* * * * * * *

[(b) Any individual in charge of a vessel or a deepwater port shall notify the Secretary as soon as he has knowledge of a discharge of oil. Any such individual who fails to notify the Secretary immediately of such discharge shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than 1 year, or both. Notification received pursuant to this subsection, or information obtained by the use of such notification, shall not be used against any such individual in any criminal case, except a prosecution for perjury or for giving a false statement.]

* * * * * * *

[(c)]*(b)* Whenever any oil is discharged from a vessel within any safety zone, from a vessel which has received oil from another vessel at a deepwater port, or from a deepwater port, the Secretary shall remove or arrange for the removal of such oil as soon as possible, unless he determines such removal will be done properly and expeditiously by the licensee of the deepwater port or the owner or operator of the vessel from which the discharge occurs.

(2) Removal of oil and actions to minimize damage from oil discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan for removal of oil and hazardous

substances established pursant to section 311(c)(2) of the Federal Water Pollution Control Act, as amended.

(3) Whenever the Secretary acts to remove a discharge of oil pursuant to this subsection, he is authorized to draw upon money available in the **[**Deepwater Port Liability Fund established pursuant to subsection (f) of this section**]** *Oil Spill Liability Trust Fund.* Such money shall be used to pay promptly for all cleanup costs incurred by the Secretary in removing or inminimizing damage caused by such oil discharge.

[(d) Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the owner and operator of a vessel shall be jointly and severally liable, without regard to fault, for cleanup costs and for damages that result from a discharge of oil from such vessel within any safety zone, or from a vessel which has received oil from another vessel at a deepwater port, except when such vessel is morred at a deepwater port. Such liability shall not exceed $150 per gross ton or $20,000,000, whichever is lesser, except that if it can be shown that such discharge was the result of gross negligence or willful misconduct within the privity and knowledge of the owner or operator, such owner and operator shall be jointly and severally liable for the full amount of all cleanup costs and damages .

[(e) Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the licensee of a deepwater port shall be liable, without regard to fault, for cleanup costs and damages that result from a discharge of oil from such deepwater port or from a vessel moored at such deepwater port. Such liability shall not exceed $50,000,000, except that if it can be shown that such damage was the result of gross negligence or willful misconduct within the privity and knowledge of the licensee, such licensee shall be liable for the full amount of all cleanup costs and damages.**]**

[(f)(1) There is established a Deepwater Port Liability Fund (hereinafter referred to as the "Fund") as a nonprofit corporate entity which may sue or be sued in its own name. The Fund shall be administered by the Secretary.

[(2) The Fund shall be liable, without regard to fault, for all cleanup costs and all damages in excess of those actually compensated pursuant to subsections (d) and (e) of this section.

[(3) Each licensee shall collect from the owner of any oil loaded or unloaded at the deepwater port operated by such licensee, at the time of loading or unloading, a fee of 2 cents per barrel, except that (A) bunker or fuel oil for the use of any vessel, and (B) oil which was transported through the trans-Alaska pipeline, shall not be subject to such collection. Such collections shall be delivered to the Fund at such times and in such manner as shall be prescribed by the Secretary. Such collections shall cease after the amount of money in the Fund has reached $100,000,000, unless there are adjudicated claims against the Fund yet to be satisfied. Collection shall be resumed when the Fund is reduced below $100,000,000. Whenever the money in the Fund is less than the claims for cleanup costs and damages for which it is liable under this section, the Fund shall borrow the balance required to pay such claims from the United States Treasury at an interest rate determined by the

Secretary of the Treasury. Costs of administration shall be paid for the Fund only after appropriation in an appropriation bill. All sums not needed for administration and the satisfaction of claims shall be prudently invested in income-producing securities issued by the United States and approved by the Secretary of the Treasury. Income from such securities shall be applied to the principal of the Fund.

[(g) Liability shall not be imposed under subsection (d) or (e) of this section if the owner or operator of a vessel or the licensee can show that the discharge was caused solely by (1) an act of war, or (2) negligence on the part of the Federal Government in establishing and maintaining aids to navigation. In addition, liability with respect to damages claimed by a damaged party shall not be imposed under subsection (d), (e), or (f) of this section if the owner or operator of a vessel, the licensee, or the Fund can show that such damage was caused solely by the negligence of such party.]

[(h)(1) In any case where liability is imposed pursuant to subsection (d) of this section, if the discharge was the result of the negligence of the licensee, the owner or operator of a vessel held liable shall be subrogated to the rights of any person entitled to recovery against such licensee.

[(2) In any case where liability is imposed pursuant to subsection (e) of this section, if the discharge was the result of the unseaworthiness of a vessel or the negligence of the owner or operator of such vessel, the licensee shall be subrogated to the rights of any person entitled to recovery against such owner or operator.

[(3) Payment of compensation for any damages pursuant to subsection (f)(2) of this section shall be subject to the Fund acquiring by subrogation all rights of the claimant to recover for such damages from any other person.

[(4) The liabilities established in this section shall in no way affect or limit any rights which the licensee, the owner, or operator of a vessel, or the Fund may have against any third party whose act may in any way have caused or contributed to a discharge of oil.

[(5) In any case where the owner or operator of a vessel or the licensee of a deepwater port from which oil is discharged acts to remove such oil in accordance with subsection (c)(1) of this section, such owner or operator or such licensee shall be entitled to recover from the Fund the reasonable cleanup cost incurred in such removal if he can show that such discharge was caused solely by (A) an act of war or (B) negligence on the part of the Federal Government in establishing and maintaining aids to navigation.

[(i)(1) The Attorney General may act on behalf of any group of damaged citizens he determines would be more adequately represented as a class in recovery of claims under this section. Sums recovered shall be distributed to the members of such group. If, within 90 days after a discharge of oil in violation of this section has occurred, the Attorney General fails to act in accordance with this paragraph, to sue on behalf of a group of persons who may be entitled to compensation pursuant to this section for damages caused by such discharge, any member of such group may maintain a class action to recover such damages on behalf of such group. Failure of the Attorney General to act in accordance with this subsection shall have no bearing on any class action maintained in accordance with this paragraph.

[(2) In any case where the number of members in the class exceeds 1,000, publishing notice of the action in the Federal Register and in local newspapers serving the areas in which the damaged parties reside shall be deemed to fulfill the requirement for public notice established by rule 23(c)(2) of the Federal Rules of Civil Procedure.

[(3) The Secretary may act on behalf of the public as trustee of the natural resources of the marine environment to recover for damages to such resources in accordance with this section. Sums recovered shall be applied to the restoration and rehabilitation of such natural resources by the appropriate agencies of Federal or State governments.

[(j)(1) The Secretary shall establish by regulation procedures for the filing and payment of claims for cleanup costs and damages pursuant to this Act.

[(2) No claims for payment of cleanup costs or damages which are filed with the Secretary more than 3 years after the date of the discharge giving rise to such claims shall be considered.

[(3) Appeals from any final determination of the Secretary pursuant to this section shall be filed not later than 30 days after such determination in the United States Court of Appeals of the circuit within which the nearest adjacent coastal State is located.]

[(k)(1) This section shall not be interpreted to preempt the field of liability or to preclude any State from imposing additional requirements or liability for any discharge of oil from a deep water pool port or a vessel within any safety zone.

[(2) Any person who receives compensation for damages pursuant to this section shall be precluded from recovering compensation for the same damages pursuant to any other State or Federal law. Any person who receives compensation for damages pursuant to any other Federal or State law shall be precluded from receiving compensation for the same damages as provided in this section.]

(c) This section shall not be interpreted to preclude any State from imposing additional requirements, not inconsistent with the provisions of the Comprehensive Oil Pollution Liability and Compensation Act, for any discharge of oil from a deepwater port or a vessel within any safety zone.

* * * * * * *

[(1) the Secretary shall require that any owner or operator of a vessel using any deepwater port, or any licensee of a deepwater port shall carry insurance or give evidence of other financial responsibility in an amount sufficient to meet the liabilities imposed by this section.]

[(m)] *(d)* As used in this section the term—

(1) "cleanup costs" means all actual costs, including but not limited to costs of the Federal Government, of any State or local government, of other nations or of their contractors or subcontractors incurred in the (A) removing or attempting to remove or (B) taking other measures to reduce or mitigate damages from any oil discharged into the marine environment in violation of subsection (a)(1) of this section;

(2) "damages" means all damages (except cleanup costs) suffered by any person, or involving real or personal property, the natural resources of the marine environment, or the coastal environment of any nation, including damages claimed without regard to ownership of any affected lands, structures, fish, wildlife, or biotic or natural resources;

(3) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping into the marine environment of quantities of oil determined to be harmful pursuant to regulations issued by the Administrator of the Environmental Protection Agency; and

(4) "owner or operator" means any person owning, operating, or chartering by demise, a vessel.

[(n)(1) The Attorney General, in cooperation with the Secretary, the Secretary of State, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, the Council on Environmental Quality, and the Administrative Conference of the United States, is authorized and directed to study methods and procedures for implementing a uniform law providing liability for cleanup costs and damages from oil spills from Outer Continental Shelf operations, deepwater ports, vessels, and other ocean-related sources. The study shall give particular attention to methods of adjudicating and settling claims as rapidly, economically, and equitably as possible.

[(2) The Attorney General shall report the results of his study together with any legislative recommendations to the Congress within 6 months after the date of enactment of this Act.]

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OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978

[TITLE III—OFFSHORE OIL SPILL POLLUTION FUND

[DEFINITIONS

[SEC. 301. For the purposes of this title, the term—

[(1) "Secretary" means the Secretary of Transportation;

[(2) "Fund" means the Offshore Oil Pollution Compensation Fund established under section 302 of this title;

[(3) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or governmental entity;

[(4) "incident" means any occurrence or series of related occurrences, involving one or more offshore facilities or vessels, or any combination thereof, which causes or poses an imminent threat of oil pollution;

[(5) "vessel" means every description of watercraft or other contrivance, whether or not self-propelled, which is operating in the waters above the Outer Continental Shelf (as the term "outer Continental Shelf" is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a))), or which is operating in the waters above submerged lands seaward from the coastline of a State (as the term "submerged lands" is described in section 2(a) of the Submerged Lands Act (43 U.S.C. 1301(a)(2))), and which is transporting oil directly from an offshore facility;

[(6) "public vessel" means a vessel which—

[(A) is owned or chartered by demise, and operated by (i) the United States, (ii) a State or political subdivision thereof, or (iii) a foreign government; and

[(B) is not engaged in commercial service;

[(7) "facility" means a structure, or group of structures (other than a vessel or vessels), used for the purpose of transporting, drilling for, producing, processing, storing, transferring, or otherwise handling oil;

[(8) "offshore facility" includes any oil refinery, drilling structure, oil storage or transfer terminal, or pipeline, or any appurtenance related to any of the foregoing, which is used to drill for, produce, store, handle, transfer, process, or transport oil produced from the Outer Continental Shelf (as the term "outer Continental Shelf" is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a))), and is located on the Outer Continental Shelf, except that such term does not include (A) a vessel, or (B) a deepwater port (as the term "deepwater port" is defined in section 3(10) of the Deepwater Port Act of 1974 (33 U.S.C. 1502));

[(9) "oil pollution" means—

[(A) the presence of oil either in an unlawful quantity or which has been discharged at an unlawful rate (i) in or on the waters above submerged lands seaward from the coastline of a State (as the term "submerged lands" is described in section 2(a)(2) of the Submerged Lands Act (43 U.S.C. 1301(a) (2))), or on the adjacent shoreline of such a State, or (ii) on the waters of the contiguous zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606); or

[(B) the presence of oil or on the waters of the high seas outside the territorial limits of the United States—

[(i) when discharged in connection with activities conducted under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.); or

[(ii) causing injury to or loss of natural resources belonging to, appertaining to, or under the exclusive management authority of, the United States; or

[(C) the presence of oil in or on the territorial sea, navigable or internal waters, or adjacent shoreline of a foreign country, in a case where damages are recoverable by a foreign claimant under this title;

[(10) "United States claimant" means any person residing in the United States, the Government of the United States or an agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim under this title;

[(11) "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof, who asserts a claim under this title;

[(12) "United States" includes and "State" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession over which the United States has jurisdiction;

[(13) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

[(14) "cleanup costs" means costs of reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from such incident;

[(15) "damages" means compensation sought pursuant to this title by any person suffering any direct and actual injury proximately caused by the discharge of oil from an offshore facility or vessel, except that such term does not include cleanup costs:

[(16) "person in charge" means the individual immediately responsible for the operation of a vessel or offshore facility;

(17) "claim" means a demand in writing for a sum certain;

[(18) "discharge" means any emission, intentional or unintentional, and includes spilling, leaking, pumping, pouring, emptying, or dumping;

[(19) "owner" means any person holding title to, or in the absence of title, any other indicia of ownership of, a vessel or offshore facility, whether by lease, permit, contract, license, or other form of agreement, or with respect to any offshore facility abandoned without prior approval of the Secretary of the Interior, the person who owned such offshore facility immediately prior to such abandonment, except that such term does not include a person who, without participating in the management or operation of a vessel or offshore facility, holds indicia of ownership primarily to protect his security interest in the vessel or offshore facility;

[(20) "operator" means—

[(A) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel; or

[(B) in the case of an offshore facility, any person, except the owner, who is responsible for the operation of such facility by agreement with the owner;

[(21) "property" means littoral, riparian, or marine property;

[(22) "removal costs" means—

[(A) costs incurred under subsection (c), (d), or (l) of section 311 of the Federal Water Pollution Control Act, and section 5 of the Intervention on the High Seas Act; and

[(B) cleanup costs, other than the costs described in subparagraph (A);

[(23) "guarantor" means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator;

[(24) "gross ton" means a unit of 100 cubic feet of the purpose of measuring the total unit capacity of a vessel; and

[(25) "barrel" means 42 United States gallons at 60 degrees Fahrenheit.

[FUND ESTABLISHMENT, ADMINISTRATION, AND FINANCING

[SEC. 302. (a) There is hereby established in the Treasury of the United States on Offshore Oil Pollution Compensation Fund in an amount not to exceed $200,000,000, except that such limitation shall be increased to the extent necessary to permit any moneys recovered or collected which are referred to in subsection (b)(2) of this section to be paid into the Fund. The Fund shall be administered by the Secretary and the Secretary of the Treasury as specified in this title. The Fund may sue and be sued in its own name.

[(b) The Fund shall be composed of—

[(1) all fees collected pursuant to subsection (d) o this section; and

[(2) all other moneys recovered or collected on behalf of the Fund under section 308 or any other provision of this title.

[(c) The Fund shall be immediately available for—

[(1) removal costs described in section 301(22);

[(2) the processing and settlement of claims under section 307 of this title (including the costs of assessing injury to, or destruction of, natural resources); and

[(3) subject to such amounts as are provided in appropriation Acts, all administrative and personnel costs of the Federal Government incident to the administration of this title, including, but not limited to, the claims settlement activities and adjudicatory and judicial proceedings, whether or not such costs are recoverable under section 308 of this title.

The Secretary is authorized to promulgate regulations designating the person or persons who may obligate available money in the Fund for such purposes.

[(d)(1) The Secretary shall levy and the Secretary of the Treasury shall collect a fee of not to exceed 3 cents per barrel on oil obtained from the Outer Continental Shelf, which shall be imposed on the owner of the oil when such oil is produced.

[(2) The Secretary of the Treasury, after consulting with the Secretary, may promulgate reasonable regulations relating to the collection of the fees authorized by paragraph (1) of this subsection and, from time to time, the modification thereof. Any modification shall become effective on the date specified in the regulation making such modification, but no earlier than the ninetieth day following the date such regulation is published in the Federal Register. Any modification of the fee shall be designed to insure that the Fund is maintained at a level of not less than $100,000,000 and not more than $200,000,000. No regulation that sets or modifies fees whether or not in effect, may be stayed by any court pending completion of judicial review of such regulation.

[(a)(A) Any person who fails to collect or pay any fee as required by any regulation promulgated under paragraph (2) of this subsection shall be liable for a civil penalty not to exceed $10,000, to be assessed by the Secretary of the Treasury, in addition to the fee required to be collected or paid and the interest on such fee at the rate such fee would have earned if collected or paid when due and invested in special obligations of the United States in accordance with subsection (e)(2) of this section. Upon the failure of any person so liable to pay any penalty, fee, or interest upon demand, the Attorney General may, at the request of the Secretary of the Treasury, bring an action in the name of the Fund against that person for such amount.

[(B) Any person who falsifies records or documents required to be maintained under any regulation promulgated under this subsection shall be subject to prosecution for a violation of section 1001 of title 18, United States Code.

[(4) The Secretary of the Treasury may, by regulation, designate the reasonably necessary records and documents to be kept by persons from whom fees are to be collected pursuant to paragraph (1) of this subsection, and the Secretary of the Treasury and the Comptroller General of the United States shall have access to such records and documents for the purpose of audit and examination.

[(e)(1) The Secretary shall determine the level of funding required for immediate access in order to meet potential obligations of the Fund.

[(2) The Secretary of the Treasury may invest any excess in the Fund, above the level determined under paragraph (1) of this subsection, in interest-bearing special obligations of the United States. Such special obligations may be redeemed at any time in accordance with the terms of this special issue and pursuant to regulations promulgated by the Secretary of the Treasury. The interest on, and the proceeds from the sale of, any obligations held in the Fund shall be deposited in and credited to the Fund.

[(f) If at any time the moneys available in the Fund are insufficient to meet the obligations of the Fund, the Secretary shall issue to the Secretary of the Treasury notes or other obligations in the forms and denominations, bearing the interest rates and maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of such notes or other obligations shall be made by the Secretary from moneys in the Fund. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of comparable maturity. The Secretary of the Treasury shall purchase any notes or other obligations issued under this subsection and, for that purpose, he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purpose for which securities may be issued under that Act are extended to include any purchase of such notes or other obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

[DAMAGES AND CLAIMANTS

[SEC. 303. (a) Claims for economic loss, arising out of or directly resulting from oil pollution, may be asserted for—

[(1) removal costs; and

[(2) damages, including—

[(A) injury to, or destruction of, real or personal property;

[(B) loss of use of real or personal property;

[(C) injury to, or destruction of, natural resources;

[(D) loss of use of natural resources;

[(E) loss of profits or impairment of earning capacity due to injury to, or destruction of, real or personal property or natural resources; and

[(F) loss of tax revenue for a period of one year due to injury to real or personal property.

[(b) A claim authorized by subsection (a) of this section may be asserted—

[(1) under paragraph (1), by any claimant, except that the owner or operator of a vessel or offshore facility involved in an incident may assert such a claim only if he can show—

[(A) that he is entitled to a defense to liability under section 304(c)(1) or 304(c)(2) of this title; or

[(B) if not entitled to such a defense to liability, that he is entitled to a limitation of liability under section 304(b), except that if he is not entitled to such a defense to liability but is entitled to such a limitation of liability, such claim may be asserted only as to the removal costs incurred in excess of that limitation;

[(2) under paragraphs (2) (A), (B), and (D), by any United States claimant if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant;

[(3) under paragraph (2)(C), by the President, as trustees for natural resources over which the Federal Government has sovereign rights or exercises exclusive management authority, or by any State for natural resources within the boundary of the State belonging to, managed by, controlled by, or appertaining to the State, and sums recovered under paragraph (2)(C) shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources;

[(4) under paragraph (2)(E), by any United States claimant if the claimant derives at least 25 per centum of his earnings from activities which utilize the property or natural resource;

[(5) under paragraph (2)(F), by the Federal Government and any State or political subdivision thereof;

[(6) under paragraph (2) (A) through (E), by a foreign claimant to the same extent that a United States claimant may assert a claim if—

[(A) the oil pollution occurred in or on the territorial sea, navigable waters or internal waters, or adjacent shoreline of a foreign country of which the claimant is a resident;

[(B) the claimant is not otherwise compensated for his loss;

[(C) the oil was discharged from an offshore facility or from a vessel in connection with activities conducted under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.); and

[(D) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants;

[(7) under paragraph (1) or (2), by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this subsection, when he determines that the claimants would be more adequately represented as a class in asserting their claims.

[(c) If the Attorney General fails to take action under paragraph (7) of subsection (b) within sixty days of the date on which the Secretary designates a source under section 306 of this title, any member of a group described in such paragraph may maintain a class action to recover damages on behalf of that group. Failure of the Attorney General to take action shall have no bearing on any class action maintained by any claimant for damages authorized by this section.

[LIABILITY

[SEC. 304. (a) Subject to the provisions of subsections (b) and (c) of this section, the owner and operator of a vessel other than a public vessel, or of an offshore facility, which is the source of oil pollution, or poses a threat of oil pollution in circumstances which justify the incurrence of the type of costs described in section 301(22) of this title, shall be jointly, severally, and strictly liable for all loss for which a claim may be asserted under section 303 of this title.

[(b) Except when the incident is caused primarily by willful misconduct or gross negligence, within the privity or knowledge of the owner or operator, or is caused primarily by a violation, within the privity or knowledge of the owner or operator, of applicable safety, construction, or operating standards or regulations of the Federal Government, the total of the liability under subsection (a) of this section incurred by, or on behalf of, the owner or operator shall be—

[(1) in the case of a vessel, limited to $250,000 or $300 per gross ton, whichever is greater, except when the owner or operator of a vessel fails or refuses to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities; or

[(2) in the case of an offshore facility, the total of removal and cleanup costs, and an amount limited to $35,000,000 for all damages.

[(c) There shall be no liability under subsection (a) of this section—

[(1) If the incident is caused solely by any act of war, hostilities, civil war, or insurrection, or by an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistable character, the effect of which could not have been prevented or avoided by the exercise or foresight; or

[(2) if the incident is caused solely by the negligent or intentional act of the damaged party or any third party (including any government entity).

[(d) Notwithstanding the limitations, exceptions, or defenses of subsection (b) or (c) of this section, all costs of removal incurred by the Federal Government or any State or local official or agency in connection with a discharge of oil from any offshore facility or vessel shall be borne by the owner and operator of the offshore facility or vessel from which the discharge occurred.

[(e) The Secretary shall, from time to time, report to Congress on the desirability of adjusting the monetary limitation of liability specified in subsection (b) of this section.

[(f)(1) Subject to the provisions of paragraph (2) of this subsection, the Fund shall be liable, without any limitation, for all losses for which a claim may be asserted under section 303 of this title, to the extent that such losses are not otherwise compensated.

[(2) Except for the removal costs specified in section 301(22), there shall be no liability under paragraph (1) of this subsection—

[(A) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

[(B) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

[(g)(1) In addition to the losses for which claims may be asserted under section 303 of this title, and without regard to the limitation of liability provided in subsection (b) of this section, the owner, operator, or guarantor of an offshore facility or vessel shall be liable to the claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim is presented to such person to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which such owner, operator, or guarantor offers the claimant an amount equal to or greater than the amount finally paid in satisfaction of the claim to the date upon which the claimant accepts such amount, inclusive. However, if such owner, operator, or guarantor offers the claimant, within sixty days of the date upon which the claim is presented, or of the date upon which advertising is commenced pursuant to section 306 of this title, whichever is later, an amount equal to or greater than the amount finally paid in satisfaction of the claim, the owner, operator, or guarantor shall be liable for the interest provided in this paragraph only from the date the offer is accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

[(2) The interest provided in paragraph (1) of this subsection shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

[(h) Nothing in this title shall bar a cause of action that an owner or operator, subject to liability under subsection (a) of this section, or a guarantor, has or would have, by reason of subrogation or othewise, against any person.

[(i) To the extent that they are in conflict or otherwise inconsistent with any other provision of law relating to liability or the limitation thereof, the provisions of this section shall supersede such other provision of law, including section 4283(a) of the Revised Statutes (46 U.S.C. 183(a)).

[FINANCIAL RESPONSIBILITY

[SEC. 305. (a)(1) The owner or operator of any vessel (except a non-self-propelled barge that does not carry oil as fuel or cargo) which uses an offshore facility shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of such vessel would be exposed in a case where he would be entitled to limit his liability in accordance with the provisions of section 304(b) of this title. Financial responsibility may be established by any one, or any combination, of the following methods, acceptable to the President: evidence of insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In any case where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

[(2) The Secretary, in accordance with regulations promulgated by him, shall—

[(A) deny entry to any port or place in the United States or to the navigable waters to; and

[(B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States,

any vessel subject to this subsection which, upon request, does not produce certification furnished by the President that such vessel is in compliance with the financial responsibility provisions of paragraph (1) of this subsection.

[(3) The Secretary, in accordance with regulations promulgated by him, shall have access to all offshore facilities and vessels conducting activities under the Outer Continental Shelf Lands Act, and such facilities and vessels shall, upon request, show certification of financial responsibility.

[(b) The owner or operator of an offshore facility which (1) is used for drilling for, producing, or processing oil, or (2) has the capacity to transport, store, transfer, or otherwise handle more than one thousand barrels of oil at any one time, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of such facility would be exposed in a case where he would be entitled to limit his liability in accordance with the provisions of section 304(b) of this title, or $35,000,000 whichever is less.

[(c) Any claim authorized by section 303(a) may be asserted directly against any guarantor providing evidence of financial responsibility for any owner or operator of an offshore facility or vessel as required under this section. In defending such claim, the guarantor shall be entitled to invoke all rights and defenses which would be available to such owner or operator under this title. Such guarantor shall also be entitled to invoke the defense that the incident was caused by the willful misconduct of such owner or operator, but shall not be entitled to invoke any other defense which such guarantor might be entitled to invoke in proceedings brought by such owner or operator against such guarantor.

[(d) The President shall conduct a study to determine—

[(1) whether adequate private oil pollution insurance protection is available on reasonable terms and conditions to the owners and operators of vessels, onshore facilities, and offshore facilities; and

[(2) whether the market for such insurance is sufficiently competitive to assure purchasers of features such as a reasonable range of deductibles, coinsurance provisions, and exclusions.

The President shall submit the results of his study, togethre with his recommendation, within one year after the date of enactment of this title, and shall submit an interim report on his study within three months after such date of enactment.

[NOTIFICATION, DESIGNATION, AND ADVERTISEMENT

[Sec. 306. (a) The person in charge of a vessel or offshore facility which is involved in an incident shall immediately notify the Secretary of the incident as soon as he has knowledge thereof. Notification received pursuant to this subsection or information obtained by the exploitation of such notifcation shall not be used against such person or his employer in any criminal case, other than a case involving prosecution for perjury or for giving a false statement.

[(b)(1) When the Secretary receives information pursuant to subsection (a) of this section or otherwise of an incident which involves oil pollution, the Secretary shall, where possible, designate the source or sources of the oil pollution and shall immediately notify the owner and operator of such source and the guarantor of such designation.

[(2) When a source designated under paragraph (1) of this subsection is a vessel or offshore facility and the owner, operator, or guarantor fails to inform the Secretary, within five days after receiving notification of the designation, of his denial of such designation, such owner, operator, or guarantor, as required by regulations promulgated by the Secretary, shall advertise the designation and the procedures by which claims may be presented to him. If advertisement is not made in accordance with this paragraph, the Secretary shall, as he finds necessary, and at the expense of the owner, operator, or guarantor involved, advertise the designation and the procedures by which claims may be presented to such owner, operator, or guarantor.

[(c) In a case where—

[(1) the owner, operator, and guarantor all deny a designation in accordance with paragraph (2) of subsection (b) of this section;

[(2) the source of the discharge was a public vessel; or

[(3) the Secretary is unable to designate the source or sources of the discharge under paragraph (1) of such subsection (b),

the Secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the Fund.

[(d) Advertisement under subsection (b) of this section shall commence no later than fifteen days after the date of the designation made under such subsection and shall continue for a period of no less than thirty days.

[CLAIMS SETTLEMENT

[SEC. 307. (a) Except as provided in subsection (b) of this section, all claims shall be presented to the owner, operator, or guarantor.

[(b) All claims shall be presented to the Fund—

[(1) where the Secretary has advertised or otherwise notified claimants in accordance with section 306(c) of this title; or

[(2) where the owner or operator may recover under the provisions of section 303(b)(1) of this title.

[(c) In the case of a claim presented in accordance with subsection (a) of this section, and in which—

[(1) the person to whom the claim is presented denies all liability for the claim, for any reason; or

[(2) the claim is not settled by any person by payment to the claimant within sixty days from the date upon which (A) the claim is presented, or (B) advertising is commenced pursuant to section 306(b)(2), whichever is later,

the claimant may elect to commence an action in court against the owner, operator, or guarantor, or to present the claim to the Fund, that election to be irrevocable and exclusive.

[(d) In the case of a claim presented in accordance with subsection (a) of this section, where full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 304(b) of this title or because the owner, operator, and guarantor to whom the claim is presented are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the Fund.

[(e) In the case of a claim which is presented to any person, pursuant to subsection (a) of this section, and which is being presented to the Fund, pursuant to subsection (c) or (d) of this section, such person, at the request of the claimant, shall transmit the claim and supporting documents to the Fund. The Secretary may, by regulation, prescribe the documents to be transmitted and the terms under which they are to be transmitted.

[(f) In the case of a claim presented to the Fund, pursuant to subsection (b), (c), or (d) of this section, and in which the Fund—

[(1) denies all liability for the claim, for any reason; or

[(2) does not settle the claim by payment to the claimant within sixty days after the date upon which (A) the claim is presented to the Fund, or (B) advertising is commenced pursuant to section 306(c) of this title, whichever is later,

the claimant may submit the dispute to the Secretary for decision in accordance with section 554 of title 5, United States Code. However, a claimant who has presented a claim to the Fund pursuant to such subsection (b) may elect to commence an action in court against the Fund in lieu of submission of the dispute to the Secretary for decision, that election to be irrevocable and exclusive.

[(g)(1) The Secretary shall promulgate regulations which establish uniform procedures and standards for the appraisal and settlement of claims against the Fund.

[(2) Except as provided in paragraph (3) of this subsection, the Secretary shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the Fund and may contract to pay compensation for those facilities and services. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5) upon a showing by the Secretary that advertising is not reasonably practicable. The Secretary may make advance payments to a contractor for services and facilities, and the Secretary may advance to the contractor funds to be used for the payment of claims. The Secretary may review and audit claim payments made pursuant to this subsection. A payment to a claimant for a single claim in excess of $100,000, or two or more claims aggregating in excess of $200,000, shall be first approved by the Secretary. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted by or on behalf of such State or any of its agencies or subdivisions unless the payment has been approved by the Secretary.

[(3) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the Secretary may use Federal personnel to process claims against the Fund.

[(h) Notwithstanding subsection (b) of section 556 of title 5, United States Code, the Secretary is authorized to appoint, from time to time for a period of not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes submitted to the Secretary pursuant to subsection (f) of this section. At least one member of each panel shall be qualified to conduct adjudicatory proceedings and shall preside over the activities of the panel. Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may be appointed from private life or from any Federal agency except the staff administering the Fund. Each panel member appointed from private life shall receive a per diem compensation, and each panel member shall receive necessary traveling and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special Government employees, shall apply to panel members appointed from private life.

[(i)(1) Upon receipt of a request for a decision from a claimant, properly made, the Secretary shall refer the dispute to (A) an administrative law judge appointed under section 3105 of title 5, United States Code, or (B) a panel appointed under subsection (h) of this section.

[(2) The administrative law judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States judicial circuit within which the damage complained of occurred, or, if the damage complained of occurred, within two or more circuits, of any of the affected circuits, or, if the damage occurred outside any circuit, of the nearest circuit.

[(3) Upon receipt of a dispute, the administrative law judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code. In any proceeding subject to this subsection, the presiding officer may require by subpena any person to appear and testify or to appear and produce books, papers, documents, or tangible things at a hearing or deposition at any designated place. Subpenas shall be issued and enforced in accordance with procedures in subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the Secretary. If a person fails or refuses to obey a subpena, the Secretary may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

[(4) A hearing conducted under this subsection shall be conducted within the United States judicial district within which, or nearest to which, the damage complained of occurred, or, if the damage complained of occurred within two or more districts, in any of the affected districts, or if the damage occurred outside any district, in the nearest district.

[(5) The decision of the administrative law judge or panel under this subsection shall be the final order of the Secretary, except that the Secretary, in his discretion and in accordance with regulations which he may promulgate, may review the decision upon his own initiative or upon exception of the claimant or the Fund.

[(6) Final orders of the Secretary made under this subsection shall be reviewable pursuant to section 702 of title 5, United States Code, in the district courts of the United States.

[(j)(1) In any action brought pursuant to this title against an owner, operator, or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the Fund at the same time such pleadings are served upon the opposing parties.

[(2) The Fund may intervene in any action described in paragraph (1) of this subsection as a matter of right.

[(3) In any action described in paragraph (1) of this subsection to which the Fund is a party, if the owner, operator, or guarantor admits liability under this title, the Fund upon its motion shall be dismissed therefrom to the extent of the admitted liability.

[(4) If the Fund receives from either the plaintiff or the defendant notice of an action described in paragraph (1) of this subsection, the Fund shall be bound by any judgment entered therein, whether or not the Fund was a party to the action.

[(5) If neither the plaintiff nor the defendant gives notice of an action described in paragraph (1) of this subsection to the Fund, the limitation of liability otherwise permitted by section 304(b) of this title shall not be available to the defendant, and the plaintiff shall not recover from the Fund any sums not paid by the defendant.

[(k) In any action brought against the Fund under this title, the plaintiff may join any owner, operator, or guarantor, and the Fund may join any person who is or may be liable to the Fund under any provision of this title.

[(l) No claim may be presented, nor may an action be commenced for economic losses recoverable under this title, unless such claim is presented to, or such action is commenced against, the owner, operator, or guarantor, or the Fund, as to their respective liabilities, within three years after the date of discovery of the economic loss for which a claim may be asserted under section 303(a) of this title, or within six years of the date of the incident which resulted in such loss, whichever is earlier.

[SUBROGATION

[SEC. 308. (a) Any person or governmental entity, including the Fund, who pays compensation to any claimant for an economic loss, compensable under section 303 of this title, shall be subrogated to all rights, claims, and causes of action which such claimant has under this title.

[(b) Upon request of the Secretary, the Attorney General may commence an action, on behalf of the Fund, for the compensation paid by the Fund to any claimant pursuant to this title. Such an action may be commenced against any owner, operator, or guarantor, or against any other person or governmental entity, who is liable, pursuant to any law, to the compensated claimant or to the Fund, or economic losses for which the compensation was paid.

[(c) In any claim or action by the Fund against any owner, operator, or guarantor, pursuant to the provisions of subsection (a) or (b), the Fund shall recover—

[(1) for a claim presented to the Fund (where there has been a denial or source designation) pursuant to section 307(b)(1) of this title, or (where there has been a denial or liability) pursuant to section 307(c)(1) of this title—

[(A) subject only to the limitation of liability to which the defendant is entitled under section 304(b) of this title, the amount the Fund has paid to the claimant, without reduction;

[(B) interest on such amount, at the rate calculated in accordance with section 304(g)(2) of this title, from the date upon which the claim is presented by the claimant to the defendant to the date upon which the Fund is paid by the defendant, inclusive, less the period, if any, from the date upon which the Fund offers to the claimant the amount finally paid by the Fund to the claimant in satisfaction of the claim against the Fund to the date upon which the claimant accepts that offer, inclusive; and

[(C) all costs incurred by the Fund by reason of the claim, both of the claimant against the Fund and the Fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; and

[(2) for a claim presented to the Fund pursuant to section 307 (c)(2) of this title—

[(A) in which the amount the Fund has paid to the claimant exceeds the largest amount, if any, the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

[(i) subject to dispute by the defendant as to any excess over the amount offered to the claimant by the defendant, the amount the Fund has paid to the claimant;

[(ii) interest, at the rate calculated in accordance with section 304(g)(2) of this title, for the period specified in paragraph (1)(B) of this subsection; and

[(iii) all costs incurred by the Fund by reason of the claim of the Fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; or

[(B) in which the amount the Fund has paid to the claimant is less than or equal to the largest amount the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

[(i) the amount which the Fund has paid to the claimant, without reduction;

[(ii) interest, at the rate calculated in accordance with section 304(g)(2) of this title, from the date upon which the claim is presented by the claimant to the defendant to the date upon which the defendant offered to the claimant the largest amount referred to in this subparagraph, except that if the defendant tenders the offer of the largest amount referred to in this subparagraph within sixty days after the date upon which the claim of the claimant is either presented to the defendant or advertising is commenced pursuant to section 306 of this title, the defendant shall not be liable for interest for that period; and

[(iii) interest from the date upon which the claim of the Fund against the defendant is presented to the defendant to the date upon which the Fund is paid, inclusive, less the period, if any, from the date upon which the defendant offers to the Fund the amount finally paid to the Fund in satisfaction of the claim of the Fund to the date upon which the Fund accepts that offer, inclusive.

[(d) The Fund shall pay over to the claimant that portion of any interest the Fund recovers, pursuant to subsection (c)(1) and (2)(A), for the period from the date upon which the claim of the claimant is presented to the defendant to the date upon which the claimant is paid by the Fund, inclusive, less the period from the date upon which the Fund offers to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant accepts such offer, inclusive.

[(e) The Fund is entitled to recover for all interest and costs specified in subsection (c) of this section without regard to any limitation of liability to which the defendant may otherwise be entitled under this title.

[JURISDICTION AND VENUE

[SEC. 309. (a) The United States district courts shall have original and exclusive jurisdiction of all controversies arising under this title, without regard to the citizenship of the parties or the amount in controversy.

[(b) Venue shall lie in any district wherein the injury complained of occurred, or wherein the defendant resides, may be found, or has his principal office. For the purposes of this section, the Fund shall reside in the District of Columbia.

[RELATIONSHIP TO OTHER LAW

[SEC. 310. (a) Any person who receives compensation for damages or removal costs pursuant to this title shall be precluded from recovering compensation for the same damages or removal costs pursuant to any other State or Federal law. Any person who receives compensation for damages or removal costs pursuant to any other State or Federal law shall be precluded from receiving compensation for the same damages or removal costs under this title.

[(b) No owner or operator of an offshore facility or vessel who establishes and maintains evidence of financial responsibility in accordance with this section shall be required under any State law, rule, or regulation to establish any other evidence of financial responsibility in connection with liability for the discharge of oil from such offshore facility or vessel. Evidence of compliance with the financial responsibility requirement of this section shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the discharge of oil from such offshore facility or vessel.

[(c) Except as otherwise provided in this title, this title shall not be interpreted to preempt the field of liability or to preclude any State from imposing additional requirements or liability for any discharge of oil resulting in damages or removal costs within the jurisdiction of such State.

[PROHIBITION

[SEC. 311. The discharge of oil from any offshore facility or vessel, in quantities which the President under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)) determines to be harmful, is prohibited.

[PENALTIES

[SEC. 312. (a)(1) Any person who fails to comply with the requirements of section 305 of this title, the regulations promulgated thereunder, or any denial or detention order, shall be subject to a civil penalty of not to exceed $10,000.

[(2) The civil penalty described in paragraph (1) of this subsection may be assessed and compromised by the President or his designee, in connection with section 305(a)(1) of this title, and by the Secretary, in connection with section 305(a)(3) and section 305(b) of this title. No penalty shall be assessed until notice and an opportunity for hearing on the alleged violation have been given. In determining the amount of the penalty or the amount agreed upon in compromise the demonstrated good faith of the party shall be taken into consideration.

[(3) At the request of the official assessing a penalty under this subsection, the Attorney General may bring an action in the name of the Fund to collect the penalty assessed.

[(b) Any person in charge who is subject to the jurisdiction of the United States and who fails to give the notification required by section 306(a) of this title shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than one year, or both.

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 313. (a) There is authorized to be appropriated for the administration of this title $10,000,000 for the fiscal year ending September 30, 1979, $5,000,000 for the fiscal year ending September 30, 1980, and $5,000,000 for the fiscal year ending September 30, 1981.

[(b) There are also authorized to be appropriated to the Fund, from time to time, such amounts as may be necessary to carry out the purposes of the applicable provisions of this title, including the entering into contracts, any disbursements of funds, and the issuance of notes or other obligations pursuant to section 302(f) of this title.

[(c) Notwithstanding any other provision of this title, the authority to make contracts, to make disbursements, to issue notes or other obligations pursuant to section 302(f) of this title, to charge and collect fees pursuant to section 302(d) of this title, or to exercise any other spending authority shall be effective only to the extent provided, without fiscal year limitation, in appropriation Acts enacted after the date of enactment of this title.

[ANNUAL REPORT

[SEC. 314. Within six months after the end of each fiscal year, the Secretary shall submit to the Congress (1) a report on the administration of the Fund during such fiscal year, and (2) his recommendations for such legislative changes as he finds necessary or appropriate to improve the management of the Fund and the administration of the liability provisions of this title.

[EFFECTIVE DATES

[SEC. 315. (a) This section, subsection (e) of section 304, subsection (d) of section 305, and all provisions of this title authorizing the delegation of authority or the promulgation of regulations shall be effective on the date of enactment of this title.

[(b) All other provisions of this title, and rules and regulations promulgated pursuant to such provisions, shall be effective on the one hundred and eightieth day after the date of enactment of this title.]

INTERNAL REVENUE CODE OF 1954

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Subtitle D—Miscellaneous Excise Taxes

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CHAPTER 38—ENVIRONMENTAL TAXES

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Subchapter A—Tax on Petroleum

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SEC. 4611. IMPOSITION OF TAX.

(a) General Rule.—There is hereby imposed a tax [of 0.79 cent a barrel] *at the rate specified in subsection (c)* on—

(1) crude oil received at a United States refinery, and

(2) petroleum products entered into the United States for consumption, use or warehousing.

(b) Tax on Certain Uses and Exportation.—

(1) In general.—If—

(A) any domestic crude oil is used in or exported from the United States, and

(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a),

then a tax of [0.79 cent a barrel] *at the rate specified in subsection (c)* is hereby imposed on such crude oil.

(2) Exception for use on premises where produced.—Paragraph (1) shall not apply to any use of crude oil for extracting oil or natural gas on the premises where such oil was produced.

* * * * * * *

(c) Rate of Tax—

(1) In General.—The rate of the taxes imposed by this section is the sum of—

(A) the Superfund financing rate, and

(B) the Oil Spill Liability Trust Fund financing rate.

(2) Rates.—For purposes of paragraph (1)—

(A) the Superfund financing rate is 0.79 cent a barrel, and

(B) the Oil Spill Liability Trust Fund financing rate is 1.3 cents a barrel.

[(c)] *(d)* Persons Liable for Tax.—

(1) Crude oil received at refinery.—The tax imposed by subsection (a)(1) shall be paid by the operator of the United States refinery.

(2) Imported petroleum product.—The tax imposed by subsection (a)(2) shall be paid by the person entering the product for consumption, use or warehousing.

(3) Tax on certain uses or exports.—The tax imposed by subsection (b) shall be paid by the person using or exporting the crude oil, as the case may be.

[(d) Termination.—The taxes imposed by this section shall not apply after September 30, 1985, except that if on September 30, 1983, or September 30, 1984—

[(1) the unobligated balance in the Hazardous Substance Response Trust Fund as of such date exceeds $900,000,000, and

[(2) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that such unobligated balance will exceed $500,000,000 on September 30 of the following year if no tax is imposed under section 4611 or 4661 during the calendar year following the date referred to above.

then no tax shall be imposed by this section during the first calendar year beginning after the date referred to in paragraph (1).]

(e) Application of Taxes.—

(1) Superfund rate.—The Superfund financing rate under subsection (c) shall not apply after September 30, 1985.

(2) Oil spill rate.—The Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply after September 30, 1985, and before October 1, 1990.

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SEC. 4612. DEFINITIONS AND SPECIAL RULES.

(a) * * *

* * * * * * *

(c) Credit Against Portion of Tax Attributable to Oil Spill Rate.—There shall be allowed as a credit against so much of the tax imposed by section 4611 as is attributable to the Oil Spill Liability Trust Fund financing rate under section 4611(c) for any period an amount equal to the excess of the aggregate amount paid by the taxpayer into the Deepwater Port Liability Trust Fund and the Offshore Oil Pollution Compensation Fund over the amount of such payments taken into account under this subsection for all prior periods.

[(c)] *(d)* Disposition of Revenues From Puerto Rico and the Virgin Islands.—The provisions of subsection (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 461.

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Subchapter B—Tax on Certain Chemicals

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SEC. 4661. IMPOSITION OF TAX.

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[(c) TERMINATION.—No tax shall be imposed under this section during any period during which no tax is imposed under section 4611(a).] *that is attributable to the Superfund financing rate under section 4611(c).*

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Subtitle I—Trust Fund Code

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CHAPTER 98—TRUST FUND CODE

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Subchapter A—Establishment of Trust Funds

Sec. 9501. Black Lung Disability Trust Fund.

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Sec. 9505. Oil Spill Liability Trust Fund.

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SEC. 9505. OIL SPILL LIABILITY TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Oil Spill Liability Trust Fund", consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

(b) TRANSFER TO TRUST FUND.—There are hereby appropriated to the Oil Spill Liability Trust Fund amounts equivalent to—

(1) taxes received in the Treasury under section 4611 (relating to environmental tax on petroleum) to the extent attributable to the Oil Spill Liability Trust Fund financing rate under section 4611(c),

(2) amounts recovered, collected, or received under part 1 of the Comprehensive Oil Spill Pollution Compensation Act,

(3) amounts remaining on the date of the enactment of this section in the Deepwater Port Liability Fund established by section 18(f) of the Deepwater Port Act of 1974,

(4) amounts remaining on the date of the enactment of this section in the Offshore Oil Pollution Compensation Fund established under section 302 of the Outer Continental Shelf Lands Act Amendments of 1978, and

(5) amounts credited to such trust fund under section 311(s) of the Federal Water Pollution Control Act.

(c) EXPENDITURES.—

(1) GENERAL EXPENDITURES PURPOSES.—

(A) IN GENERAL.—Amounts in the Oil Spill Liability Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures for—

(i) PAYMENTS TO GOVERNMENTS ONLY FOR REMOVAL COSTS.—Amounts shall be available under subparagraph (A) for payments to any government only for removal costs and administrative expenses related to removal costs.

(ii) Restrictions on contributions to International fund.—Under regulations prescribed by the Secretary, amounts shall be available under subparagraph (A) with respect to any contribution to the International Fund only in proportion to the portion of such fund used for a purpose for which amounts may be paid from the Oil Spill Liability Trust Fund.

(iii) References to other acts.—Any reference in any clause of subparagraph (A) to any Act shall be treated as a reference to such Act as in effect on the date of the enactment of this section.

(2) Limitations on expenditures.—

(A) $200,000,000 per incident.—The maximum amount which may be paid from the Oil Spill Liability Trust Fund with respect to any single incident shall not exceed $200,000,000.

(B) $30,000,000 minimum balance.—Except in the case of payments described in paragraph (1)(A), a payment may be made from such Trust Fund only if the amount in such Trust Fund after such payment will not be less than $30,000,000.

(d) Authority to Borrow.—

(1) In general.—There are authorized to be appropriated to the Oil Spill Liability Trust Fund, as repayable advances, such sums as may be necessary to carry out the purposes of such Trust Fund.

(2) Limitation on amount outstanding.—The maximum aggregate amount of repayable advances to the Oil Spill Liability Trust Fund which is outstanding at any one time shall not exceed $300,000,000.

(3) Repayment of advances.—Rules similar to the rules of paragraph (3) of section 223(c) of the Hazardous Substance Response Revenue Act of 1980 shall apply for purposes of this subsection.

(4) Final repayment.—No advance shall be made to the Oil Spill Liability Trust Fund after September 30, 1990, and all advances to such Fund shall be repaid on or before such date.

(e) Liability of the United States Limited to Amount in Trust Fund.—

(1) General rule.—Any claim filed against the Oil Spill Liability Trust Fund may be paid only out of such Trust Fund.

(i) the payment of removal costs described in section 8501(23)(A) of the Comprehensive Oil Pollution Liability and Compensation Act,

(ii) the payment of claims under the Comprehensive Oil Pollution Liability and Compensation Act for damage which is not otherwise compensated,

(iii) carrying out subsections (c), (d), (i), and (l) of section 311 of the Federal Water Pollution Control Act with respect to any discharge of oil (as defined in such section),

(iv) carrying out section 5 of the Intervention on the High Seas Act relating to oil pollution or the substantial threat of oil pollution,

(v) the payment of all expenses of administration incurred by the Federal Government under the Comprehensive Oil Pollution Liability and Compensation Act, and

(vi) the payment of contributions to the International Fund under section 6404 of such Act.

(B) Special rules.—

(2) Coordination with other provisions.—Nothing in the Comprehensive Oil Pollution Liability and Compensation Act or in any amendment made by such Act shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Oil Spill Liability Trust Fund.

(f) Order in which unpaid claims are to be paid.—If at any time the Oil Spill Liability Trust Fund has insufficient funds (or is unable by reason of subsection (c)(2)) to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under such subsections, be paid in full in the order in which they were finally determined.

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COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION ACT

TRANS-ALASKA OIL PIPELINE

* * * * * * *

TITLE II

SHORT TITLE

Sec. 201. This title may be cited as the "Trans-Alaska Pipeline Authorization Act"

* * * * * * *

LIABILITY

Sec. 204. (a)(1) * * *

* * * * * * *

(b) If any area *in the State of Alaska* within or without the right-of-way or permit area granted under this title is polluted by any activities *related to the trans-Alaska oil pipeline* conducted by or on behalf of the holder to whom such right-of-way or permit was granted, and such pollution damages or threatens to damage aquatic life, wildlife, or public or private property, the control and total removal of the pollutant shall be at the expense of such holder, including any administrative and other costs incurred by the Secretary or any other Federal officer or agency. Upon failure of such holder to adequately control and remove such pollutant, the Secretary, in cooperation with other Federal, State, or local agencies, or in cooperation with such holder, or both, shall have the right to accomplish the control and removal at the expense of such holder. *This subsection shall not apply to removal costs resulting from oil* *pollution as that term is defined in section 6101 of the Comprehensive Oil Pollution Liability and Compensation Act.*

* * * * * * *

[(c)(1) Notwithstanding the provisions of any other law, if oil that has been transported through the trans-Alaska pipeline is loaded on a vessel at the terminal facilities of the pipeline, the owner and operator of the vessel (jointly and severally) and the Trans-Alaska Pipeline Liability Fund established by this subsection, shall be strictly liable without regard to fault in accordance with the provisions of this subsection for all damages, including clean-up costs, sustained by any person or entity, public or private, including residents of Canada, as the result of discharges of oil from such vessel.

[(2) Strict liability shall not be imposed under this subsection if the owner or operator of the vessel, or the Fund, can prove that the damages were caused by an act of war or by the negligence of the United States or other governmental agency. Strict liability shall not be imposed under this subsection with respect to the claim of a damaged party if the owner or operator of the vessel, or the Fund, can prove that the damage was caused by the negligence of such party.

[(3) Strict liability for all claims arising out of any one incident shall not exceed $100,000,000. The owner and operator of the vessel shall be jointly and severally liable for the first $14,000,000 of such claims that are allowed. Financial responsibility for $14,000,000 shall be demonstrated in accordance with the provisions of section 311(p) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(p)) before the oil is loaded. The Fund shall be liable for the balance of the claims that are allowed up to $100,000,000. If the total claims allowed exceed $100,000,000, they shall be reduced proportionately. The unpaid portion of any claim may be asserted and adjudicated under other applicable Federal or State law.

[(4) The Trans-Alaska Pipeline Liability Fund is hereby established as a non-profit corporate entity that may sue and be sued in its own name. The Fund shall be administered by the holders of the trans-Alaska pipeline right-of-way under regulations prescribed by the Secretary. The Fund shall be subject to an annual audit by the Comptroller General, and a copy of the audit shall be submitted to the Congress.

[(5) The operator of the pipeline shall collect from the owner of the oil at the time it is loaded on the vessel a fee of five cents per barrel. The collection shall cease when $100,000,000 has been accumulated in the Fund, and it shall be resumed when the accumulation in the Fund falls below $100,000,000.

[(6) The collections under paragraph (5) shall be delivered to the Fund. Cost of administration shall be paid from the money paid to the Fund, and all sums not needed for administration and the satisfaction of claims shall be invested prudently in income-producing securities approved by the Secretary. Income from such securities shall be added to the principal of the Fund.

[(7) The provisions of this subsection shall apply only to vessels engaged in transportation between the terminal facilities of the pipeline and ports under the jurisdiction of the United States.

Strict liability under this subsection shall cease when the oil has first been brought ashore at a port under the jurisdiction of the United States.

[(8) In any case where liability without regard to fault is imposed pursuant to this subsection and the damages involved were caused by the unseaworthiness of the vessel or by negligence, the owner and operator of the vessel, and the Fund, as the case may be, shall be subrogated under applicable State and Federal laws to the rights under said laws of any person entitled to recovery hereunder. If any subrogee brings an action based on unseaworthiness of the vessel or negligence of its owner or operator, it may recover from any affiliate of the owner or operator, if the respective owner or operator fails to satisfy any claim by the subrogee allowed under this paragraph.

[(9) This subsection shall not be interpreted to preempt the field of strict liability or to preclude any State from imposing additional requirements.

[(10) If the Fund is unable to satisfy a claim asserted and finally determined under this subsection, the Fund may borrow the money needed to satisfy the claim from any commercial credit source, at the lowest available rate of interest, subject to approval of the Secretary.

[(11) For purposes of this subsection only, the term "affiliate" includes—

[(A) Any person owned or effectively controlled by the vessel owner or operator; or

[(B) Any person that effectively controls or has the power effectively to control the vessel owner or operator by—

[(i) stock interest, or

[(ii) representation on a board of directors or similar body, or

[(iii) contract or other agreement with other stockholders, or

[(iv) otherwise; or

[(C) Any person which is under common ownership or control with the vessel owner or operator.

[(12) The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization.]

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TITLE IX—COMMITTEE ON SMALL BUSINESS

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC, July 25, 1986.

Hon. WILLIAM H. GRAY III,
Chairman, Committee on the Budget,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Section 2(j) of the Concurrent Resolution on the Budget—Fiscal Year 1987 (S. Con. Res. 120) requires the House Committee on Small Business to report changes in laws within our juridiction to achieve outlay savings aggregating $412 million over the next three fiscal years.

On July 23, 1986 the Committee met and with a quorum present ordered the attached measure, which may be cited as the Corporation for Small Business Charter Act, to be reported in compliance with the Resolution. Also attached are explanatory and other materials.

Best wishes,

PARREN J. MITCHELL, *Chairman.*

Attachments.

REPORT TO ACCOMPANY RECOMMENDATIONS FROM THE COMMITTEE ON SMALL BUSINESS

INTRODUCTION AND COMMITTEE CONSIDERATION

This measure is derived from H.R. 5019 which originated in the 98th Congress, when Chairman Mitchell on May 21, 1984, introduced H.R. 5687, a bill to amend the Small Business Investment Act of 1958 to create the Corporation for Small Business Investment and to transfer certain functions of the Small Business Administration to the Corporation. This earlier "Corporation for Small Business Investment Charter Act" was referred to the House Committee on Small Business, but no hearings were held in the 98th Congress.

In the first session of the 99th Congress, Chairman Mitchell and the ranking minority member, Mr. McDade, introduced H.R. 2281, a bill to amend the Small Business Investment Act of 1958 to create the Corporation for Small Business Investment and to transfer certain functions of the Small Business Administration to the Corporation, which was referred to the House Committee on Small Business. It was reintroduced with the cosponsorship of 36 members of the House Small Business Committee, on October 2, 1985. The legislation, as introduced, placed the Committee on record as favoring a new institution: a Government-sponsored private Corporation designed to provide access to the private capital markets for small business investment companies (SBICs) and minority enterprise small business investment companies (MESBICs) so that they, in turn, could provide a stable and continuing flow of ventre capital to and capital to and minority business. The Committee recognize that despite their success, the stability of these programs is threatened by persistent Federal deficits and the necessity to carefully allocate scarce Federal resources. The challenge of the COSBI concept was to establish a workable system which gives these vital small firms continued access to the private sources of growth capital, while minimizing cost to taxpayers, a unique and creative solution to the problem small business continually faces in trying to secure long-term investment capital.

While COSBI would be a congressionally-chartered corporation, it would remain a private-sector company, capitalized and managed by the SBIC and MESBIC industries. It would serve as a financial intermediary to the private capital markets for the industry, assuring a source of capital and making a continuing stream of investments in small firms in search of such capital. COSBI, once operating, would obviate the need for authorizations for annual appropriations to support SBIC and MESBIC investment activities.

The Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems held its first hearing on the COSBI concept on December 4, 1985.

Pursuit of the COSBI concept and refinement of the legislation led to the Chairman's introduction, with 36 cosponsors, of H.R. 5019 on June 12, 1986.

On June 24 and 26, 1986, the Subcommittee on SBA and SBIC Authority, Minority Enterprise, and General Small Business Problems held hearings on H.R. 5019. Witnesses at these hearings who testified in full support of the Charter Act were Mr. Duane Hill, Chairman of the American Association of Minority Enterprise Small Business Investment Companies, Mr. Thomas Noojin, Chairman of the National Association of Small Business Investment Companies; and Mr. Samuel W. Adams, Legislative Representative for the National Federation of Independent Business.

The administration's witness was Mr. Robert A. Turnbull, Associate Deputy Administrator for Management and Administration of the Small Business Administration who did not support H.R. 5019 as introduced.

The Full Committee marked up H.R. 5019 on July 23, 1986, and adopted a series of technical amendments offered by Chairman Mitchell. The Committee by unanimous vote ordered the bill, as amended, to be reported.

BACKGROUND AND NEED FOR THE LEGISLATION

Despite evident obstacles, small business continues to play a vital role in preserving and improving our Nation's economic health. Small business has been our unquestioned leader in job creation, product innovation, and the development of new technologies; and the small business sector of our economy represents the most productive entrepreneurial system in the world.

If newly established small firms and young companies with prospects for growth are to continue to flourish and play a major role in our economy, they must have access to an adequate flow of equity capital and long-term venture financing. These small, high-risk companies have traditionally found it difficult to obtain needed capital from conventional financing sources, and their access to sources of venture capital has been restricted.

The Small Business Investment Act of 1958, which authorized the Small Business Investment Company (SBIC) Program, recognized that small business concerns are faced with a real difficulty in obtaining long-term and equity capital required for adequate growth and development. Commercial banks are not able to furnish such financing; their function lies primarily in short and intermediate-term lending; they normally do not supply venture capital or long-term credit. Private venture capital funds selectively invest in a very narrow range of companies with exceptional prospects for growth. As a result, there is a huge gap between the small business sector's critical need for long-term growth capital and the availability of this type of financing.

The SBIC industry programs were designed to meet this critical small business capital need, but the current process has become ineffective. SBICs need a reliable source of funds and a stable regulatory environment to do their job. Uncertain appropriations and restrictive allocations of funds have made their financing unreliable, while continually changing regulatory policies have created an unstable environment for SBIC investments. The SBIC industry could provide increased levels of growth capital to thousands of additional small businesses if it had the necessary financial resources and the proper operating environment.

The proposed legislation here reported, was developed through a joint effort of the National Association of Small Business Investment Companies (NASBIC) and the American Association of Minority Enterprise Small Business Investment Companies (AAMESBIC), which are, respectively, the national trade associations for the SBIC and MESBIC industries. SBICs are privately capitalized, owned and managed investment firms that provide equity capital, long-term financing, and management counsel to new and expanding small business concerns. MESBICs are a specialized group of SBICs that invest exclusively in small firms owned by minorities and other disadvantaged persons.

SBICs are licensed and regulated by the Small Business Administration (SBA) and can borrow funds from the Government on a long-term basis for reinvestment in small business. In 1972, MESBICs were authorized by Congress as a specialized type of SBIC and were provided certain funding benefits in return for restricting their investments to socially or economically disadvantaged firms. A MESBIC can sell its preferred stock to SBA on attractive terms and can borrow funds on a long-term basis from SBA at below-market rates.

SBIC's provide equity capital, long-term loans and management assistance and are responsible for many of our nation's great small business success stories. The SBIC industry has become a major source of equity capital for small businesses now representing over 20% of venture capital funds dispersed. Companies which have stimulated the economy and provided thousands of jobs, such as Cray Research Inc., and Essence Magazine, would not have started without SBA financing.

THE PRESENT SBIC PROGRAM

Federal loans and investments in SBICs and MESBICs

In order to encourage the formation of SBICs and MESBICs, the Federal Government provides a financial incentive to these companies in the form of long-term financing which they can reinvest in small business. These government funds supplement the SBIC's private capital; they are generally available on a ratio of up to 3 times the amount of private capital of the SBIC and are commonly referred to as "leverage". More than 65% of an SBIC's private capital (30% for MESBICs) must be invested in small firms before the SBIC is eligible for leverage, placing the private funds at risk before the government assumes any exposure to risk. Leveraged funds can only be drawn down on a staged basis over time, and each SBIC must demonstrate its need for funds and its ability to efficiently invest them in small concerns.

The forms of leverage differ for SBICs and MESBICs. Leverage for regular SBICs is available only through the issuance of long-term debentures which, at the SBIC's election, have maturities of either 3, 5, 7 or 10 years with interest payable semi-annually and principal due at maturity. Leveraged financing is available on a monthly basis, with interest rates computed on the basis of comparable Treasury issues, plus a fee for servicing. The debentures are issued by the SBIC and guaranteed by SBA, while the funds are provided by the Federal Financing Bank (FFB). Until the debenture matures, the SBIC must pay interest semi-annually. The rate of interest on each debenture issue is determined by the Secretary of the U.S. Treasury at the time of sale. The rate is based on the current average market yields of outstanding U.S. Treasury obligations which have remaining periods to maturity comparable to those of the newly-issued debentures. Although repayment of the principal is due in full at the debenture's maturity, an SBIC in good standing may apply for the sale or SBA-guarantee of new debentures in order to refund its maturing debentures.

Leverage for MESBICs is made available on more liberal terms and in different forms in order to compensate for the limited and riskier market in which MESBICs invest. MESBICs may obtain funds in two ways, through the issuance of debentures or the sale of preferred stock to SBA. Once certain qualification standards are met, the form of leverage is at the election of the MESBIC.

MESBIC debentures, all of which have a 10 year maturity, are similar in terms and payments schedules to those of regular SBICs; and the base interest rate on these debentures is also determined by the rates on comparable Treasury issues. However, the effective interest rate on MESBIC debentures is reduced by 3% for a period of 5 years, thereby reducing the debt service costs of the MESBIC. Because of this interest rate feature, funds for MESBIC debentures are not processed through the FFB system. Consequently, SBA uses direct funds which are appropriated annually by the Congress.

In addition, SBA is authorized to directly purchase preferred stock issued by MESBICs. Initially, this stock purchase can be in an amount equal to the MESBIC's private capital. If certain qualifications are met, SBA can purchase preferred stock in an amount equal to twice the MESBIC's private capital. The preferred stock carries a 3% cumulative dividend, payable if earned and prior to other dividend distributions. Since these preferred stock purchases are direct investments by SBA, funds for this purpose must be appropriated annually by the Congress.

Congress authorizes an approved annual level for SBIC guarantees. The only directly appropriated funds involve a small amount provided to SBA's reserve account to cover potential losses. Currently, SBA is authorized to guarantee $239 million in SBIC debentures and to provide another $39 million in MESBIC assistance.

SBICs exist to supply equity capital, long-term loans, and management assistance to qualifying small businesses. They invest in all types of industries, including the manufacturing, wholesale, retail and service sectors. Many investment companies seek out small businesses with new products or services because of the strong growth potential of such firms. Some SBICs specialize in the field in which their management has special knowledge or competency. Most, however, consider a wide variety of investment opportunities.

Only firms defined by the SBA as "small" are eligible for SBIC financing. Under current regulations for purposes of eligibility for SBIC or MESBIC financing, SBA defines a small business as one whose net worth is $6.0 million or less, and whose average annual net (after tax) income for the preceding two years does not exceed $2.0 million. In determining whether or not a business qualifies, its parents, subsidiaries, and affiliates must also be considered.

In order to finance small business concerns, SBICs obtain financing through a number of means: acquiring private equity capital, publicly selling stock, taking advantage of government leverage, issuing debt securities, and obtaining loans. In turn, it is the function of the SBIC to act as a financier for small business concerns. Such financing is specifically tailored to the needs of each small business concern. As financier, the SBIC has a variety of options. SBICs can make straight long-term loans to small business concerns in order to provide them with funds needed for sound financing, growth, modernization, and expansion. In addition to debt financing, SBICs can also make equity investments in the small concerns it assists, but cannot take a majority or controlling interest in such firms.

An SBIC may provide loans independently, or in cooperation with other public or private (incorporated or unincorporated) lenders. SBIC loans to small business concerns may be secured, and should be of reasonably sound value. Such a loan may have a maturity of no more than twenty years, although under certain conditions the SBIC may renew or extend a loan's maturity for up to ten years. An SBIC may elect to loan money to a small business concern in the form of debt securities—loans for which the small business concern issues a security, which may be convertible into, or confer rights to purchase, equity in a small business concern. These securities may also have special amortization and subordination terms. By law, the SBIC must provide equity capital to small business concerns, and may do so by purchasing the small business concern's equity securities. The SBIC may not, however, become a general partner in any unincorporated small business concern, or otherwise become liable for the general obligations of an unincorporated concern.

The role of SBA

Under the Small Business Investment Act of 1958, Congress assigned certain administrative, financial and regulatory responsibilities for the SBIC program to the Small Business Administration. Under policy direction from the SBA Administrator, these functions are carried out primarily by the agency's Investment Division. SBA's current program responsibilities include: the licensing of newly organized SBICs; the regulation of operating SBICs; the provision of financial assistance (or "leverage") to SBICs; and, when necessary, the liquidation of SBICs for financial or regulatory reasons.

Licensing

The SBIC licensing process is a complex procedure which now takes from 6 to 12 months to complete. A comprehensive application is required with detailed supporting documentation and a $5,000 fee. SBA's licensing requirements for all SBICs include a minimum paid-in private capital of $1 million; the existence of a legally qualified entity (corporation or partnership) having a minimum life of 30 years; qualified management; the satisfactory business reputation and character of the proposed owners and managers; a justification of need for the type of financing to be provided by the SBIC in its proposed area of operations; and justification regarding the SBIC's probability of operating successfully, in terms of both financial soundness and adequate profitability.

Regulation

Operating SBICs are subject to a highly technical and complex regulatory process which SBA administers. The regulatory framework is drawn from the Small Business Investment Act of 1958, which spells out a series of restricted and prohibited activities, grants SBA certain enforcement and sanctioning police powers, and authorizes SBA to issue regulations to carry out the purposes of the Act.

SBA's detailed regulations covering SBICs are spelled out in some 95 pages of the U.S. Code of Federal Regulations. These formal regulations are supplemented by hundreds of additional pages of SBA Policy and Procedural Releases, policy pronouncements and legal opinions, as well as a continuing series of ad hoc policy determinations and interpretations.

The primary areas of restricted activity (commonly referred to as the "Big 6") include prohibitions or restrictions on transactions involving: (1) conflicts of interest; (2) control of small concerns; (3) the amount a small concern is charged for financing; (4) the amount an SBIC may invest in any one small concern, (5) a series of specifically prohibited investment activities; and (6) a catch-all prohibition against activities "not contemplated by the Act".

Each SBIC is subject to a regulatory audit once a year, carried out by the field audit staff of the SBA Inspector General. The results of this audit, including any allegations of regulatory violations, are referred to the Investment Division of SBA, which makes final determinations on regulatory violations and necessary corrective actions. The Investment Division has a range of sanctions it may impose on SBICs found to be in violation of the Act or regulations. In the extreme case of serious regulatory abuse, the SBIC's license can be withdrawn, repayment of all outstanding monies owed SBA immediately accelerated and the SBIC's assets liquidated. All matters involving possible SBIC criminal activities are referred to the U.S. Justice Department.

SBICs are also subject to an annual review of their financial condition by SBA. In addition to a required audit by an outside certified public accountant, SBA requires each SBIC to submit comprehensive financial statements once a year. These statements are provided in a format required by SBA and must meet a specialized set of SBA accounting standards.

Current problems in the SBIC industry

Despite its successful 26 year track record, the SBIC program faces very serious problems. In order to plan, operate and invest effectively, SBICs need a reliable source of funds and a stable regulatory process. Continued uncertainties of annual Congressional funding and restrictive allocations of scarce dollars have made the financial process difficult. In addition, continually changing government regulatory policies have created an unreliable and unstable operating atmosphere which is counterproductive to sound investment and business practices. These funding and regulatory policy problems have recently been compounded by rapid expansion of both the SBIC industry and its level of investment activities. The SBIC industry has reached a critical stage in its development. The industry needs greater access to capital markets through a financial intermediary designed to meet the unique requirements of SBICs. The proposed Corporation for Small Business Investment would give SBICs that facility.

The instability of funding

The history of the SBIC and MESBIC programs provides a clear reflection of how unstable the Federal Government has been as a source of funds for the industry.

From 1959 until 1971, funds for the program were available only through direct, on-budget financing which required a year-by-year appropriation of funds by the Congress. In six of those twelve years, the SBIC industry received no leverage, either because Congress did not appropriate funds or because the White House refused to release the dollars.

In the period 1971 through 1974, a process was established through which SBIC debentures guaranteed by SBA were sold in blocks through Wall Street investment banking houses. While this approach provided some funds for the industry, it was too cumbersome and costly to work effectively or on a timely basis.

In 1974, the current system of placing SBA guaranteed SBIC debentures with the FFB was put in place. The system worked effectively for a period of six years when the Congressionally authorized SBIC guarantee level was adequate to meet the industry's level of demand for funds.

However, beginning in 1981, the industry was again confronted with severe budgetary restrictions due to Gramm/Latta budget cuts while at the same time there was a demand for program increases due to rapid expansion of the industry and the need to "roll over" previously outstanding SBIC debentures which had reached maturity. The industry's need for funds far exceeded the authorized levels of leverage; and SBA was forced to allocate the limited funds that were available, to place ceilings on the amount any one SBIC could borrow and, on several occasions, to close the loan "window" completely.

Problems in the MESBIC funding process

Unlike regular SBICs, MESBICs specialize in investing in small businesses owned by socially or economically disadvantaged entrepreneurs. In recognition of the additional risk that comes with investing in a limited group of small businesses, MESBICs receive incentives beyond those offered to regular SBICs. There are not other similar sources of venture capital available to the community MESBICs serve. The MESBIC industry offers a cadre of experienced, and ethnically diverse investors who understand the special needs of minority entrepreneurs and well-equipped to serve those needs. The private/public partnership of the MESBIC industry insures that its investors' time and money are wisely spent. By placing its private capital at risk first, MESBICs' investments are made in those companies exhibiting the greatest potential for success.

The MESBIC industry was first established in the late sixties. Using the SBIC industry as a model, corporate America and the U.S. government agreed to cooperate in a matching fund partnership to promote the participation of minorities in the U.S. economic system. In 1971, the first year for which MESBIC investment figures are available, MESBICs invested $2.2 million, with an average investment figure of less than $13,000. By 1985, MESBICs had reached an annual investment figure of $107.7 million, with the majority of financings over $100,000. Between 1978 and 1985, MESBICs invested over $462 million in 5,422 minority owned small businesses. These same companies produced over $4.5 billion in revenues and created over 82,000 jobs. Last year alone, MESBIC investments resulted in the creation of over $105 million in tax revenue.

MESBICs may obtain matching government funds in one of two ways. The first source of leverage is through the SBA purchase of preferred stock from the MESBICs. The second source is through the sale of SBA-guaranteed debentures with a 3% interest rate subsidy on the first five years of a ten year debenture: e.g., on a 12% ten year debenture, a MESBIC would pay 9% the first five years and 12% the second five years.

MESBICs continue to serve the important public policy goals of promoting minority entrepreneurship, management training, and employment. By combining public with private funds, these Congressionally-mandated goals are achieved with maximum efficiency and effectiveness at a minimal cost to the government. A recent study showed that for every dollar the government invests in the MESBIC program, it receives over twelve dollars in tax revenue and other benefits.

Many MESBIC investments are arranged through a consortium of investors, drawing additional private dollars to the minority small business community. In addition, these successful entrepreneurs are providing important employment and management training opportunities to other minority individuals. MESBIC investments also help minorities to enter and compete in high technology areas. In fact, the MESBIC industry has invested in 75% of the minority-owned communications projects in the country. Thus, by helping to establish the Corporation for Small Business Investment, Congress would be achieving the important public policy objective of promoting job creation and innovation in the minority community.

Unfortunately, funding stability has been a particular problem for the MESBIC industry over the past several years. In the industry's early years, there was an abundance of leverage money available. However, the MESBIC leverage applications in recent years have significantly exceeded the available capital. Even those companies which fulfill all the leverage requirements must wait months to obtain their funding. Each new quarter's leverage funds are released to fill the preceding quarter's backlog. This is true although the industry, which has a potential government leverage ratio of 4:1, is presently leveraged at only 1:1.5.

The resulting uncertainty in terms of future funding leaves MESBICs in a very difficult situation. Several hundred million dollars of private capital from corporations, individuals, communities, and other sources have been invested in their companies. If they want to insure the availability of funds for future investments, they are compelled to attempt to raise additional private capital. On the other hand, those private capital sources are less willing to provide more funds if the MESBIC can't assure them that their funds will be matched with government leverage in the future. Given this situation, MESBIC executives can make one of two choices: They can continue to seek out new companies in which to invest and hope that additional funds will be available in the future, or they can hold on to their money to finance their existing portfolio's future needs. Fortunately, MESBICs have chosen the former.

The uncertain regulatory environment

Government regulation of the SBIC program is inherently a complex and delicate process because it involves intervention of the government in a fast-moving investment activity involving private market transactions. SBIC managers are faced with hundreds of judgmental decisions which can translate into millions of dollars gained or lost for their investors. It is essential that SBIC managers be able to rely with a substantial degree of uncertainty on the long-term continuity of government policies. When that certainty disappears and the government becomes an unreliable partner, the program and the benefits it provides to small business begin to unravel.

Fundamental to an effective SBA–SBIC partnership is a regulatory atmosphere which is fair and reasonable and recognizes both the realities of the venture capital process and the benefits that the private marketplace provides. Freely negotiated transactions which involve complex value judgments and risk/reward decisions are the creative force in the SBIC investment process. Arbitrary government intervention in this process, or regulatory rigidity which precludes flexibility is antithetical to and destructive of the process itself.

Growth of the SBIC industry

These funding and regulatory policy problems are further compounded by the SBIC industry's rapid expansion and professionalization over the past six years. During this period, 223 new SBICs were licensed, reflecting a growth rate of 33%. In addition, the capital base of these newly formed SBICs is substantially larger, averaging over $1.5 million; and this will be pushed even higher with the new minimum capital requirement of $1 million. Total private capital of the industry has more than doubled over the last six years to over $1 billion. Since the current outstanding leverage ratio is approximately only 1:1, this means that another $2 billion in expected leverage demand remains to be drawn down—far beyond the levels of leverage in even the most optimistic government budget projections.

Even more important, SBIC investments in small business are being made at record-setting levels. SBICs and MESBICs are investing at a rate of well over $450 million per year, with the average size of financing doubling to over $275,000, and SBICs seeing a continuing high level of quality investments.

These trends clearly indicate that without additional financial reosurces there will be a continuing squeeze on the SBIC industry's liquidity position, reducing their ability to provide needed equity capital and long-term financing to small firms. The industry's current rate of investment in small growth companies can only be sustained through the development of a vehicle which will provide a constant and stable flow of funds to the industry.

The SBIC industry has been a major source of venture capital for small business for more than 26 years. SBICs and MESBICs have invested more than $6 billion in over 70,000 small growth firms. In 1984 alone, SBICs made 2,755 investments in a wide variety of small growth companies in geographically diverse sections of the country; at the same time MESBICs financed 1,087 minority-owned small businesses. Today, over 500 SBICs and MESBICs, with assets in excess of $2 billion, are actively engaged in the financing of thousands of small, job-creating growth companies.

A brief review of the industry's recent history will be useful in understanding the Committee's desire to enact the COSBI initiative. The 1970s were a dynamic 10 years for SBICs. The industry's energy was primarily devoted to many positive improvements in the program, including such things as increased leverage, improved compensation plans for SBIC managers, size standard liberalization, limited partnership SBICs and, of course, an effective system of financing through the Federal Financing Bank (FFB).

SBIC assets at cost, which had been $633 million in 1970, reached $1.4 billion by 1980. During the decade, the capital gains tax differential had been restored, ERISA had been liberalized to open up pension fund and other institutional investments in the industry, the economy was beginning to recover from the shock of oil price increases and the number of SBICs and MESBICs was dramatically increasing.

Unfortunately, the trends established in the 70's did not carry forward into the new decade. At a time when the SBIC industry was poised to continue its leadership position in the venture capital industry, the Reagan administration took away its momentum without warning by stopping leverage and licensing.

Despite this successful record of growth and accomplishments, the SBIC program has reached a critical crossroads. Weathering uncertain funding and restrictive allocations of scarce dollars as well as continually changing government policies, all of which are counterproductive to long-term investing, the industry is laboring under the ultimate insult to the success of the program: in its last two budget submissions, the Reagan administration has proposed that the SBIC program, along with other all SBA financial programs, be terminated.

The SBIC program was created by Congress during a period of near balanced budgets when inflation was measured in terms of basis points. As the circumstances have changed, so has the mood of Congress and the Administration and the popularity of the SBA and its programs. Attempts to eliminate SBA led by David Stockman have severely disrupted the industry's attempt to function as a well run operation. As a result of these threats to close down the program, destabilizing policies and uncertain access to leverage, it is absolutely essential to privatize the SBIC program and bring stability and predictability to the industry.

WHAT THE BILL WOULD DO

The United States Congress has chartered a number of institutions designed to attract capital investment into sectors of the economy considered essential to the nation's welfare. Food, shelter and education are leading examples. The Farm Credit System was created by the Congress to supply capital for farmers. The Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA) and the Federal Home Loan Mortgage Corporation (FHLMC) were chartered to supply investment funds for housing and home mortgages. The Student Loan Marketing Association (SLMA) was designed to provide liquidity for loans for higher education.

All of these institutions have the following characteristics: (1) They were established by Acts of Congress and governed by boards of directors appointed in part by the President. (2) Their capital, at lease initially, was provided by the users of the facility. (3) The United States Treasury has the authority to purchase up to a specific amount of the obligations of the institutions. This investment authority by the Treasury is viewed by the investment community as a Treasury "backstop". This authority serves as a symbol to investors that the U.S. Government has a vital interest in the financial soundness of the institution. (4) Although not explicitly backed by the full faith and credit of the U.S. Government as U.S. Treasury securities, the securities of these institutions are considered U.S. "agency" securities and borrowing or interest costs generally are lower than corporate AAA securities but with a spread somewhat above U.S. Treasury securities of comparable maturities. (5) As U.S. agency securities, they are exempt from SEC registration and are eligible for purchase by depository institutions and by many local and state government authorities. (6) As federal instrumentalities, the institutions are exempt from state taxation (except real estate taxes) but are subject to federal income taxation (except FHLMC and most of the Farm Credit System). (7) The institutions are financial "middlemen", raising funds through the large-scale issue of standard, liquid securities and passing these on to those who disaggregate the monies into smaller quantities for leading to individuals.

This legislation provides that the Corporation will have these characteristics.

The COSBI concept

The Corporation for Small Business Investment would be chartered by the U.S. Congress as an institution designed to attract capital investment into the small business sector of the economy. Although privately-owned and managed, the new Corporation would have characteristics similar to those of other Congressionally chartered institutions. Its primary mission will be to provide long-term financing and an effective operating environment for SBICs.

COSBI would operate as a "capital bank", providing SBICs access to a stable source of leverage. Because of its special status as a government-sponsored enterprise, COSBI would be able to sell its securities in the capital markets at highly competitive yields. In turn, COSBI would be able to provide leverage to the SBIC industry on terms which are attractive and structured to meet the unique financial needs of SBICs. This assured source of affordable capital will increase the SBIC industry's capacity to make continued venture capital investments in small growth firms.

In addition, COSBI will exercise oversight of SBIC business practices through a streamlined process that is fair and efficient. COSBI's Board and management will respect the SBIC manager's need for long-term policy continuity. This operating environment will be a significant improvement over the current process of government intervention in SBIC investment activities.

Public representation on the Corporation's Board of Directors is an important part of the concept. Initially, the President of the United States would appoint an interim five member Board of Directors to arrange for the initial subscription offering of COSBI common stock and to take whatever other actions are necessary to proceed with the operation of the corporation.

All operating companies in the $1 billion SBIC industry would invest an amount equal to 2% of their private capital in this voting stock. After this $20 million in common stock of COSBI has been purchased, the stockholders would elect ten members of the Board of Directors. The remaining five would be appointed by the President.

The common stock and other securities issued by COSBI would be deemed to be "exempted securities" under the laws administered by the Securities and Exchange Commission, to the same extent as securities which are direct obligations of, or obligations guaranteed as to principal and interest by, the Federal Government. No registration statement or other documents with respect to the common stock or other securities issued by COSBI would be required by the Securities and Exchange Commission.

COSBI would be exempt from all taxation by any state or by any county, municipal or local tax authority except for real property taxes. COSBI would not be exempt from the payment of Federal corporate income tax.

COSBI would be able to conduct its business without regard to any "doing business" qualification or similar statutes in any state of the United States, including the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States.

Federally regulated depository institutions would be authorized to make capital contributions to COSBI, and to receive either common or preferred stock evidencing their contributions. COSBI would be deemed to be an agency of the United States for certain investment purposes, and obligations issued by COSBI would be lawful investments acceptable as security for all fiduciary, trust and public funds under the authority or control of the United States.

With this status, the obligations of COSBI would be considered liquid investments which could be used to satisfy reserve requirements of banks and savings and loan associations.

The Committee foresees COSBI's achieving very close to 100% participation by the SBIC industry. Both the SBIC industry and the Committee have communicated with the licensees about COSBI, through national and regional meetings as well as written literature. These communications have gone to the total industry.

Based on that effort, no single SBIC or MESBIC has voiced an objection to COSBI, or indicated lack of support for the legislation.

NASBIC surveyed the industry in an effort to obtain positive statements of support for COSBI. It solicited "letters of intent" to support COSBI from some 350 active SBICs. Over 200 (60%) of those companies, representing 70% of the industry's total assets, advised that they support COSBI. Not one SBIC objected to the legislation or indicated they do not support COSBI. The Committee's survey of SBICs and MESBICs who are not members of these associations drew a similar response.

There are some advocates of "pure privatization" who advocate "total disengagement" of any type of Federal support for the SBIC industry. From the administration's perspective, this would include removal of the backstop, the guaranty of any SBIC debentures, the assets transferred to the MESBIC Trust, tax benefits extended to SBICs, seed money for the MESBIC Trust, securities exemptions for COSBI's securities and any other form of government support, no matter how incidental. This is an extreme, inflexible and totally disingenuous position.

The Committee and the entire Congress know that complete and immediate withdrawal of all forms of government support for any federally-created program would destroy it. COSBI is a bridge to eventual privatization as the administration defines it, but the industry cannot get there in one great leap.

The Committee reminds the Congress that the administration has twice made the ultimate proposal for privatization of the SBIC industry. Its proposal was contained in the President's budget submissions in the past two years, and it was complete elimination of the program. This unfortunately is what the administration means by privatization through "total disengagement".

How COSBI would be organized and managed

Within 60 days after enactment of the COSBI bill, the President would appoint an interim Board of Directors, consisting of five members, one to be designated by the President as interim Chairman. Of the five members, two are to be representative of small business, two to be representative of SBICs and one to be the SBA Administrator. The main function of the interim Board would be to arrange for the initial subscription offering of COSBI's common stock and to take other actions necessary to proceed with the operation of the corporation.

After the initial $15 million of common stock has been purchased, COSBI would be managed by a fifteen member permanent Board of Directors. The holders of common stock would be entitled to elect ten members of the Board. The remaining five members would be appointed by the President. One of the five Board members appointed by the President would represent the MESBIC industry and two persons would be representative of small business. The Board of Directors would have the responsibility for determining the corporation's general business, investment and operating policies.

The Committee anticipates the elected members of COSBI's Board will be experienced SBIC professionals and leaders in the industry who provide balanced representation for all SBICs, regardless of size or investment policy.

The Board of Directors would also appoint, establish compensation for, and prescribe the functions, powers and duties of the executive officers selected to manage the day-to-day business operations of COSBI. The Committee expects the executive officers selected to manage the corporation will be qualified individuals who are familiar with the venture capital business and the SBIC industry in particular.

COSBI should be operated as a streamlined, efficient and cost-conscious business organization. In addition, COSBI's management would establish internal systems necessary to the sound operation of a well managed financial institution, e.g., audit and finance committees of the Board, internal finance and budgetary control systems, and automated accounting and data systems.

Following enactment of the COSBI Bill, as initial capitalization, the corporation would undertake a common stock offering to SBICs. Accordingly, each SBIC would be offered the right to subscribe a minimum number of shares of common stock on the basis of 2% of its private capital or its share in the $1 billion SBIC industry.

Proceeds from the initial subscription of COSBI common stock would be used to provide an equity base to support COSBI's borrowing activities, to provide working capital for COSBI and to carry out general corporate purposes.

COSBI would have access to additional capital based on growth in the SBIC industry. This includes capital contributions by newly-organized SBICs, and supplemental capital contributions from operating SBICs based on increases in their private capital. In addition, this bill authorizes federal depository institutions to purchase COSBI stock as well as the public. The corporation's decision to utilize these sources of capital external to the SBIC industry would be based on COSBI's performance, consideration of SBIC-industry ownership dilution, and other factors.

In order to provide COSBI with an initial asset base of sufficient size to gain recognition in the capital markets, the bill provides for the sale to COSBI at par of the $1 billion portfolio of SBA-guaranteed SBIC debentures held by FFB. It is contemplated that COSBI would finance the purchase of the FFB portfolio through the issuance of its debt securities in the money and capital markets.

The Treasury backstop

A financial "backstop" by the U.S. Treasury is a feature patterned after similar backstop provisions provided to other Federally-sponsored agencies, such as the Student Loan Marketing Association and the Federal National Mortgage Association.

Generally speaking, a Treasury backstop provision provides that if the agency in question gets into serious financial difficulty, the Federal Government may, in its discretion, step in to provide support for the agency until it has turned around and been restored to a sound financial position. It is not a guaranty by the Federal Government. It is not a line-of-credit that can be drawn down by the agency.

The purpose of a backstop is fairly straightforward. To the investment community, it has become a key distinguishing factor in the sale of agency securities. Institutional and other sophisticated investors view it as a major comfort factor in their pricing and evaluation of these securities. To them, the backstop, coupled with other features of government sponsorship, creates a perception that the public purposes of the agency are important to the Federal Government. It provides a clear indication that the government will protect the agency's credit position and will step up to the line with financial support if that becomes necessary.

The investment banking community has advised that a backstop provision is the single most important item to investment managers who determine whether a security qualifies as an investment grade "agency" security, and the absence of a backstop would severely injure the financial capacity of a new facility like COSBI as it attempted to sell its securities. Without the backstop, the sale of COSBI's securities would be either virtually impossible or the pricing so extreme that COSBI's feasibility would be questionable.

The backstop authority in this legislation is subject to the appropriations process. Congress must enact legislation specifically appropriating funds before the Secretary of the Treasury can use the backstop authority. No financial assistance can be given to COSBI without the direct approval of Congress. The ceiling on the amount the backstop is $500 million.

The House Budget Committee has officially determined that the revised version of the backstop herein would not be scored as budget authority or outlays. The investment banking community sees the present form of backstop authority as satisfactory for purposes of marketing COSBI's securities.

COSBI would serve as a secondary market and warehousing facility for loans and investments in SBICs: to provide liquidity for loans and investments in small business; to stimulate the orderly flow of private equity capital and long-term loan funds to small business; and to improve the distribution of investment capital available for small business concerns.

The principal activity of COSBI will consist of the purchase of securities from SBICs meeting certain eligibility requirements established by the corporation. It is expected that the board of directors would establish a basic policy that every SBIC, regardless of its size or investment policy, would be eligible for leverage if the SBIC's financial condition meets certain minimum qualification standards set by COSBI and applied universally to all SBICs.

It is expected that for some initial period of time COSBI will continue to finance SBICs through the purchase of long-term, fixed-rate securities similar to those currently issued through the FFB leverage system. Under this bill the corporation will have authority to finance SBICs through a variety of financial instruments which might more appropriately match the specific liquidity needs of SBICs. Once COSBI's positive performance record has been shown, its financial condition firmly established and the corporation's securities have gained acceptance in the money and capital markets, COSBI could broaden its program options and develop customized financial products to meet unique industry requirements.

COSBI indebtedness

The Investment activities of COSBI would be financed by funds raised in the money and capital markets, primarily through the issuance and sale of debt securities. COSBI's debt securities should have market acceptance as "agency" securities, a category of investments well publicized and known to informed investors. This acceptance would enable COSBI to obtain a favorable rate of interest on offerings of its obligations. Notwithstanding their acceptance as federal agency securities, COSBI's debt securities would not be obligations of the Federal government and would not be guaranteed by the Federal government.

COSBI may offer a variety of obligations, including longer-maturity debentures, intermediate-range debentures and short-term commercial paper, depending on the corporation's financial plans and needs. The debentures and shorter term notes of COSBI would be issued regularly and would be general obligations of the corporation. COSBI would also have authority to issue subordinated capital debentures, which would be general obligations of the corporation with no stock conversion provisions. COSBI is also authorized to guaranty securities based on or secured by pools or trusts of SBIC securities eligible for purchase by COSBI. The corporation could be either the issuer of such pass-through securities or act as a guarantor of such securities issued by SBICs. COSBI may also secure lines of credit through commercial banks which will enable the corporation to satisfy short-term borrowing needs, as necessary.

Under the COSBI bill, the corporation is authorized to establish standards of business conduct for SBICs. COSBI would establish standards of eligibility and licensing procedures for newly-organized SBICs to do business with the corporation and standards of business practice for operating SBICs.

The legislation has several safeguards regarding the conversion from the present SBA-administered program to COSBI, and the process by which an existing SBIC would make a smooth transition to COSBI's jurisdiction.

COSBI's authority to finance and regulate SBICs will only go into effect when certain specified events occur. COSBI becomes operational when the Corporation has raised its initial capital, elected a permanent Board of Directors and given notice to SBA that it is ready to conduct business. Thereafter, SBA's financial and regulatory authorities no longer apply to SBICs that qualify to do business with COSBI.

All currently licensed SBICs in good standing with SBA can qualify to purchase stock and do business with COSBI, i.e., they are grandfathered even though they might not meet the new standards. For example, even though they have less than $1 million in private capital, as is required for new SBICs under this bill, they are nonetheless qualified. SBICs that are in financial default to SBA or have been placed in a liquidation status for regulatory reasons cannot qualify, and will remain in the normal SBA liquidation process.

An SBIC "in good standing" can qualify to do business with COSBI if it invests in COSBI stock, enters into a contractual agreement to be regulated by COSBI and authorizes the release of its SBA-held records to COSBI. SBICs in good standing are given an ample period of time to qualify with COSBI—three months after the date COSBI gives notice to SBA that it is ready to conduct business.

The bill contains provisions relating to SBICs that elect not to qualify with COSBI. SBA is given a period of six months to issue final rules and regulations which spell out the process for winding down the operations of these SBICs. Those SBICs with no financial obligation to SBA have a two-year period to wind down their operations. SBICs that do have outstanding debt with SBA are given a wind-down period which extends two years beyond the date any debt is due or paid.

For newly-organized SBICs, the bill authorizes the corporation to establish qualification standards to do business with COSBI. Several factors to be included in these standards are specified in the bill, including: the probability of its success, and adequate capitalization and qualified management.

The bill also specifically continues existing authority which permits the purchase of an ownership interest in SBICs by commercial banks, up to an aggregate of five percent of the bank's capital and surplus. This authorization is a specific exemption from the Glass-Steagall Act, which generally prohibits banks from engaging in non-banking related activities.

The COSBI legislation provides for industry "self-regulation" within statutory guidelines and with government oversight.

From a financial perspective, COSBI wil be capitalized solely with private funds from the SBIC industry; investors in SBICs will have $1 billion of private capital at risk under COSBI: the federal guaranty will no longer be attached to any future SBIC leverage; and the singular source of funds for the industry in the future will be the private capital markets, not the government.

From the regulatory perspective, the professional industry leadership elected to COSBI's Board of Directors should do a far better job of regulating the business practices of SBICs than government regulators. The knowledge and awareness of these professional SBIC managers and the self-interest in keeping the industry free from abusive practices should create a tremendous incentive for consistent and diligent oversight and strong enforcement of proper business practices.

Major SBA regulations which currently govern operations of SBICs have been codified in very specific terms in the statute. These codified regulations include provisions: that SBICs can engage only in activities contemplated by the Act; that prohibit detrimental conflicts of interest; that restrict SBICs from taking control of small business concerns; that set a minimum period of five years for SBIC investments and four years for MESBIC investments; that restrict an SBIC from investing more than 20% of its capital in any one small business, 30% in the case of MESBICS; that specifically prohibit financings for the purpose of re-lending, foreign or passive investments, or the acquisition of farm land; and that define by statute the size standard for a small business in which an SBIC can invest.

In addition, SBA has substantial review authority over COSBI to insure that the public purposes of the Act are carried out. SBA is specifically authorized to review COSBI's criteria for the qualification of SBICs and COSBI's rules governing the operations of SBICs. In addition, SBA is authorized to examine COSBI's books and records, to obtain any necessary information from COSBI, and to report the findings of its reviews to Congress. Thus, if problems develop, and SBA is doing its job, SBA will be the first to know about it and will be in a position to immediately alert the House and Senate Small Business Committees so that corrective action can be taken at once. Because the system can work and remain viable only if it has one regulatory overseer, SBA's review authority stops at the level of COSBI and does not extend to the operations of individual SBICs. Those problems, if any, will be for COSBI and the Congress to control and correct.

The SBIC operating standards would be established in contractual agreements between COSBI and the SBICs which would replace the existing SBA regulatory framework. Under this general authority, the Corporation would establish criteria for good business practices of small business investment companies which would be contained in agreements between the Corporation and small business investment companies. Faliure to adhere to these criteria would subject the SBIC to revocation of its qualification to conduct business with the Corporation and other appropriate administrative or legal action. Such revocatory authority currently exists for the Administration under Section 308(d) of the Small Business Investment Act of 1958. The Comporaton will have broad autority to take whatever actions are necessry under the circumstances to carry out the provisions of this section. Examples of measures which may be taken included: (1) suspension or termination of agreements between the corporation and a company; (2) assessment of penalties against a company or its officers or directors; or (3) removal or suspension of officers or directors of a company. In appropriate cases, such as suspected criminal activity, the Corporation is authorized to refer a violation of this section to the Small Business Administration for investigation or to the United States attorney for the jurisiction in which the violations occurred or in which the company or its officers and directors are located. While the Corporation is not subject to the Administrative Procedure Act, it is intended that the Corporation would adopt rules or have provisions in its agreements with small business investment companies which will assure such companies or their officers and directors of reasonable opportunity to be advised of the nature of alleged violations of this section and an opprtunity to be heard by responsible officers of the Corporation before dispositive action it taken by the Corporation.

The contractual agreements would also establish a process by which COSBI will exercise oversight of an SBIC's business practices. This process would be far more efficient than the current SBA regulatory system. It would include audits, certifications of compliance by independent CPA firms, a timely review of financial reports, civil litigation where necessary, and referrals to the Justice Department in cases involving possible criminal activities.

As a government sponsored enterprise, COSBI's business and financial performance are to be subject to several forms of review. These oversight features supplement representation on the corporation's Board of Directors by the five Presidential appointees to the Board. The accounts of COSBI would be audited annually by an independent certified public accountant, and the audit report furnished annually to the Secretary of the Treasury, who will have open access to the books and records of the corporation. In turn, the Secretary of the Treasury is to deliver a report of each fiscal year audit of COSBI to the President and the Small Business Committees of the Congress. COSBI would also be required, at the end of each fiscal year, to transmit to the President, the Small Business Committees of the Congress and the SBA Administrator, a report of its operations and activities for each year.

In addition, the bill provides that COSBI will be subject to audit by the General Accounting Office at the request of either of the Small Business Committees of the Congress, as long as COSBI holds the SBA-guaranteed SBIC debenture portfolio acquired from the FFB. Finally, the Small Business Committees of the Congress would retain inherent oversight authority over COSBI as a government-supported corporation established under legislative authority of the Small Business Investment Act of 1958.

The timing and terms of COSBI debt obligations would be subject to oversight by the Secretary of the Treasury.

MESBICs and the Corporation

The present SBA programs for MESBICs will be phased out in the following manner. All preferred stock and debentures issued by MESBICs to SBA would be transferred from SBA to the Corporation. the Corporation would hold the preferred securities and debentures in a separate fund (a liquidating trust), apart from the assets of the Corporation. All dividends on the preferred securities and all interest on the debentures, together with proceeds from retired preferred securities and maturing debentures would be used to provide a 3% subsidy on the interest rate of debentures issued by MESBICs to the Corporation. The subsidy in the interest rate on debentures would be for five years.

To the extent there are unused funds from interest on the MESBIC debentures and dividends from the preferred securities, those funds will be used to reduce appropriations necessary for the Corporation's purchase of preferred securities from MESBICs.

The terms and conditions of future preferred securities issued by MESBICs, including redemption or conversion privileges and the rate of the cumulative dividends thereon, would be determined by the Trust.

Fifty years after the effective date of the Act, any preferred securities or debentures held by the Corporation would be redeemed at face value and paid to the U.S. Treasury. Thereafter, there would be no preferred security purchases or debenture subsidization for MESBICs, and they would operate as regular SBICs.

COSBI's MESBIC trust provisions

COSBI would continue to serve established Congressional goals by setting up a trust within the Corporation to continue to encourage investments in the minority small business community. The trust would be established by transferring the existing MESBIC portfolio from SBA to COSBI. The trust would also receive $100 million from the proceeds of the sale of the FFB assets to COSBI. The income generated by the trust would be used to continue to provide an interest rate subsidy on MESBIC debentures and to purchase preferred stock in MESBICs. A MESBIC, like other SBICs, would go to COSBI for financing its debentures, and would have to meet the credit criteria set forth by the Corporation. The difference would be that, for debentures issued to MESBICs, the trust would provide an interest rate subsidy for the first five years.

The funds would also be used to cover operating costs of administering the trust and to cover any losses realized on MESBIC preferred securities or debentures. This would insure that COSBI receives a competitive market rate on its securities.

The trust would be administered by five trustees. The selection process for the trustees has been carefully developed to insure that the interests of MESBICs, the Corporation, and the public are all well represented. Three of the trustees would be nominated by MESBICs and appointed by COSBI's board of directors. At least three of the trustees will, at all times, be persons from MESBICs. This requirement guarantees that the majority of the trustees will have experience in the industry and will administer the trust with the best interests of MESBICs in mind.

The nomination of trustees by MESBICs would be by cumulative vote, based on the number of shares of voting common stock of the Corporation held by each MESBIC. Each of the trustees nominated by the MESBICs would be appointed as trustees by the Corporation's board of directors unless, for good cause shown, the board refuses to approve a nominee, in which event a new nominee would be nominated by the MESBIC industry. The appointed nominees will serve three year terms, with each serving no more than two consecutive terms.

In addition to the trustees nominated by the MESBIC industry, there would be two other trustees. One of the trustees would be appointed by the President, to serve at the President's pleasure. This person would represent the public interest in the administration of the trust. The final trustee would be ex-officio, the chairman of the board of directors of the Corporation, or his designee. Thus, the interests of the Corporation as a whole also would be represented.

The trustees appointed by the Corporation would have custody and control of the trust to administer, sell, invest and reinvest the trust estate. The trust would establish separate accounting for all preferred securities, debentures, loss reserves, and other funds acquired and for the application of those funds. The trustees would make an annual accounting of the trust's operations to the Secretary of the Treasury.

The trust represents a relatively small government outlay to achieve significant results in furtherance of clearly stated public policy objectives. The one-time $100 million transfer along with the outstanding portfolio which is also being transferred, should sustain the special incentives for minority investment and job creation for a full 50 years. In addition, the trust's coverage of any losses COSBI might incur on MESBIC debentures would make COSBI a more attractive market opportunity. Only MESBIC debentures can offer a guarantee against losses through the trust. The MESBIC portion of COSBI's portfolio is thus virtually risk free in the eyes of outside investors in the Corporation's securities. This fact, in turn, should lead to increased access to capital markets for the SBIC industry as a whole which in turn should lead to increased small business investment, job creation and innovation at a time when other factors, such as the proposed changes in capital gains taxation, might be drying up other sources of venture capital.

Present funding under SBA

Present SBIC funding provisions are mandated by Public Law 99-272. Prior to enactment of P.L. 99-272 and for the past 12 years, the SBIC program was funded by the Federal Financing Bank's purchase of debentures issued by SBICs and guaranteed by SBA. Public Law 99-272 prohibits the use of such financing, and provides that funding be obtained in the public market.

Under the new law, SBA is authorized to guarantee timely payment of principal and interest on trust certificates issued against trusts or pools of debentures issued by SBICs and guaranteed by SBA. SBA will now be able to finance the program by sale in the private capital markets of either individual SBA guaranteed debentures, pools of such debentures, or SBA-guaranteed trust certificates backed by trusts or pools of such debentures. The trust certificates may be guaranteed under such terms and conditions as SBA deems appropriate, to entitle their holders to the timely payment of a proportionate share of principal and interest in a pool of SBIC issued debentures guaranteed by SBA. These guarantees carry the full faith and credit of the United States. SBA may not collect any fee in connection with issuing a guarantee on the trust certificates.

In the event that a debenture in the pool is prepaid, such prepayment will be passed through to the certificate holders, and if guaranteed, the guarantee of timely payment of principal and interest on the trust certificate will be reduced proportionately to the amount of principal and interest the prepaid debenture represents in the pool. Interest on prepaid or defaulted debentures accrues only through the date of payment. During the term of a trust certificate, it may be called for redemption by SBA due to prepayment of all of the debentures making up the pool it is issued against. If SBA pays any claims under a guarantee of a trust certificate, the statute provides that SBA will be subrogated fully to the rights satisfied by the payment.

COSBI purchase of FFB debentures

COSBI's acquisition of the SBIC debentures held by FFB serves a very important purpose for the SBIC program, small business and COSBI. The Corporation will finance the purchase of the FFB portfolio through the issuance of its securities in the capital markets. This transaction will give COSBI an initial asset base and immediate recognition in the capital markets, factors the investment banking community feels are very important to the ultimate success of COSBI.

The Administration has suggested selling SBA and other loan assets as low as 20¢–40¢ on the dollar for some of these loans. These proposals have been heavily criticized as penny-wise and pound-foolish "fire sales" because, while they create the appearance of short-term savings, the government actually ends up losing a significant part of the long-term value of the assets being sold.

The COSBI legislation resolves this problem by providing for a true par value asset sale. Under the bill COSBI will buy the SBIC debentures held by FFB, on a guaranteed basis for 100¢ on the dollar, and COSBI will assume responsibility for servicing those debentures. COSBI will pay full face value for the outstanding debentures. For $1.0 billion in SBIC debentures, COSBI will pay $1.0 billion in cash. Treasury can then invest that $1.0 billion and earn interest on it, or Treasury can use the $1.0 billion to reduce the borrowings on which it pays interest.

It is expected that COSBI will obtain the needed cash by selling its own securities in the private markets. Although these obligations could be subordinated to all other obligations, even subsequently issued, your Committee directs that this not be done. Doing so would result in the interest rate or yield on any such obligations being unnecessarily high.

The legislation provides that COSBI will purchase the portfolio during fiscal year 1987. It also specifies that the debentures being purchased are those that mature during fiscal year 1988 and thereafter, unless COSBI also elects to purchase those with 1987 maturities.

COSBI would be required to establish a participating incentive revolving fund. The annual amount of the interest income received by the Corporation on the FFB guaranteed securities (including any premium if they are re-sold) less the costs and interest on obligations issued for the purpose of acquiring such guaranteed securities, and less the costs of the Corporation to service such guaranteed securities is to be deposited in the revolving fund. Net losses on claims under SBIC securities guaranteed by the Administration shall be paid to SBA by COSBI. If the balance in the revolving fund is insufficient to pay the full amount of net losses, any amounts not paid shall accrue as a charge against the fund, and the fund only, to be paid at the earliest possible date.

The revolving fund would terminate after fifteen years or earlier if all net losses on guaranteed securities have been paid. Any balances remaining in the revolving fund at the time of termination would be distributed as follows: seventy-five per centum to the capital surplus account of the Corporation and twenty-five per centum to the MESBIC Trust.

Under the COSBI approach to financing the SBIC program, the Federal government would realize a number of immediate and substantial financial gains when the SBIC program is privatized through this legislation. The net result of the sale of the FFB-held SBIC portfolio to COSBI would be a substantial reduction in the deficit in the year of the sale. COSBI will generate net budgetary savings in excess of $500 million. The major savings are the cash purchase of the SBIC debenture and the termination of current-law budget authority for the MESBIC program. Together, these items produce a positive budget impact of over $1.0 billion.

Your Committee's specific estimate of "savings" for reconciliation purposes is as follows:

	Millions
Gross sales price in 1987	$1,040
Transfer to MESBIC Trust	−100
Normally expected payments in 1987	−90
Gross savings in 1987	850
Lost normally expected payments in 1988	−170
Lost normally expected payments in 1989	−155
Savings 1987 through 1989	525

In addition to the specific budget savings that would be generated by COSBI, there are additional financial benefits that COSBI would create for the Federal government that do not show up on the budget scorecard: e.g., interest realized by the Treasury from investment of cash proceeds, or use of the approximately $825 million in cash Treasury receives from the sale of the FFB portfolio. Earnings on these funds technically may not be "scored" for budget purposes as savings in SBA's budget function. However, Treasury can either invest these funds and earn interest, or use these funds to retire outstanding debt and save interest costs. In either case, use of this cash asset will produce real income to the Treasury and real savings of over $200 million which can be directly attributed to this bill in addition to the "scored" savings of more than $500 million.

The SBIC industry currently has paid-in private capital of approximately $1.3 billion. The Small Business Investment Act of 1958 authorizes the SBA to provide leverage to SBICs on a ratio of up to $4 for every $1 of private capital. However, SBICs have only drawn down $1.2 billion. Essentially, this means the government has an outstanding commitment to provide more than an additional $3 billion in leverage to the SBIC industry. By converting to COSBI, the industry is voluntarily relieving the government of any obligation to provide that $3 billion, and demonstrating its willingness to raise any capital needed in the future.

If the government's commitment to the MESBIC program were to continue for another 20 years at an average annual level of $50 million, the total direct appropriations required would be $1 billion. The prospect for these continuing outlays also disappears under COSBI.

The SBIC program has proven to be one of the most profitable endeavors the government has ever initiated in terms of the new tax revenues the industry has generated over 27 successful years of operation. If projections of industry growth and expanded flows of capital to small business are correct, COSBI will be an even more productive engine for the generation of new tax revenues.

COSBI will assume all of the financial, regulatory, administrative and servicing costs and responsibilities for operating the SBIC program. By placing its $1.3 billion of privately invested capital on the line, the industry will assume the paramount risk and show its confidence that COSBI will work. And since $500 million Treasury backstop is subject to appropriations, it would not be considered budget authority or outlays. When these factors are coupled with the $500 million of "scored" savings, COSBI, as a total package, is clearly a winning proposition for the Federal government.

CONCLUSION

In 1967, Congress added a provision to the Small Business Investment Act of 1958 which requires SBA to make: "* * * recommendations with respect to the feasibility and organization of a small business capital bank to encourage private financing of small business investment companies * * *"

The Congress is still waiting for an acceptable response from the agency or the administration * * *

In the interim, SBICs and MESBICs have built an impressive record of developing many of the most successful job-generating and innovative small businesses in the nation. But now the industry is at a critical crossroads that will determine its future and the future of many small firms which the industry is designed to assist.

The current mood in the administration, shared by some in Congress, is to eliminate or curtail a broad range of domestic programs, regardless of the benefits they produce for the economy, and to eliminate any government-supported programs which are involved in the credit markets. At the same time, the SBIC industry is faced with the fact that SBA's annual authorization, and the SBIC annual authorization for leverage, are just too small to be a consequential factor in the Federal budget debate.

SBICs are in the business of making long-term investments. In order to plan, operate and invest effectively, SBICs need a reliable source of long-term funds and a regulatory environment with long-term stability. The current leverage and regulatory process is no longer serving the needs of small business or the SBIC industry. Continued uncertainties of annual Congressional funding and restrictive allocations of scarce dollars have made the current financial support process unreliable. Continually changing government regulatory policies have created an unreliable and unstable operating atmosphere, counterproductive to the business of long-term investing.

The options are very limited. Unless there is a creative vehicle like COSBI, the SBIC industry's future is in jeopardy. SBICs must have access to the capital markets through a financial intermediary that is responsive to the capital markets through a financial intermediary that is responsive to the unique needs of small business investment companies. COSBI will give SBICs that facility.

The COSBI legislation was developed over the past two years with considerable industry input and counsel and advice from experts in the capital markets. The Committee believes COSBI represents a dramatic structural redesign of the SBIC program that will work. The legislation's outstanding feature is the transfer and conversion of a Government-operated program to the private sector and the simultaneous reduction of Government involvement in a private-market financial process. This legislation has successfully addressed a series of questions on the Federal Government's intervention in the capital markets on behalf of small business, the Government's oversight responsibility for federally chartered corporations, and the balance between self-governance, deregulation, and protection of the interests of small business.

COSBI is endorsed by the leading small business organizations, including the United States Chamber of Commerce, the Small Business Legislative Council, the National Federation of Independent Business, Small Business United, the National Small Business Association, the SEC Government-Business Forum on Small Business Capital Formation, and the 1984 Small Business National Issues Conference, as well as the National Association of Small Business Investment Companies and the American Association of Minority Enterprise Small Business Investment Companies.

COSBI, operating within the risk-reward system of the private marketplace, will generate enormous benefits for the U.S. economy. Small business will be the prime beneficiary. COSBI will provide small business access to the major capital markets, and will, in just a few years, increase the flow of venture capital to small firms by hundreds of millions of dollars, perhaps billions. Because small business is the major job creator and innovator in the American economy, increased capital venture investments flowing through the new system will create thousands of new jobs in a wide variety of industries as well as thousands of product innovations, technologies and new commercial applications. The creation of COSBI will reduce the Federal budget deficit by $525 million. The Government will also benefit by the elimination of SBA's complex financial and regulatory apparatus and its accompanying payroll, a savings of $4 million per year. Finally, this country's venture capital system will be greatly enhanced by conversion of the SBIC program to a fully private system.

Under COSBI, the private marketplace will provide hundreds of millions of dollars for venture capital investments in small firms. The impact of these investments on our economy will be enormous in terms of the kinds of job creation, new products and increased innovation that only small business can produce. In addition, the Federal government will benefit from increased tax revenues produced from the profits, operations and employment of small growth firms and a streamlined government agency. The SBIC industry would experience significant growth under COSBI, to the ultimate benefit of the American economy.

MATTERS REQUIRED TO BE DISCUSSED UNDER HOUSE RULES

In compliance with clause 2(l)(2) of rule XI of the House of Representatives, the following statement is made relative to the vote on the motion to report this measure, the Corporation for Small Business Investment Charter Act.

A majority of the Committee voted in person and was actually present and the motion was approved by a recorded vote of 40–0.

In compliance with clause 2 (l)(3) of the rule XI of the Rules of the House of Representatives, the following statements are made:

With regard to subdivision (A), relating to oversight findings, the Committee finds, in keeping with clause 32(b)(1) of rule X, that this legislation is in full compliance with the provision of this rule of the House which states:

> In addition each such committee shall review and study any conditions or circumstances which may indicate the necessity or desirability of enacting new or additional legislation within the jurisdiction of that committee. * * *

With regard to subdivision (B), relating to the statement required by section 308(a) of the Congressional Budget Act of 1974, the following statement is made relative to the legislation:

Section 3(a)(3) of the Congressional Budget Act defines the term "tax expenditures" as those revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability.

None of the provisions of this measure deals with taxation and thus, in your Committee's opinion, this bill does not provide new or increased tax expenditures.

Section 3(a)(2) of the Congressional Budget Act defines the term "budget authority" as authority provided by law to enter into obligations which will result in immediate or future outlays involving Government funds.

Under this definition, it is the final action of Congress that authorizes an agency to enter into obligations which constitutes new budget authority. In those cases which entail (1) an authorization for an agency to undertake a program; (2) an authorization for apporpriation of funds to permit that agency to enter into obligations; and (3) an actual appropriation of such funds, it would be only the final action of Congress in appropriating funds which constitutes the budget authority.

None of the provisions of this measure appropriates funds and thus, in your Committee's opinion, the bill does not provide new budget authority. Accordingly, no comparison of budget authority, outlays or tax expenditures or 5-year projections have been made.

Section 401(c)(2) of the Congressional Budget Act defines the term "new spending authority" as spending authority not provided on the effective date of P.L. 99–177:

> (1) to enter into contracts under which the United States is obligated to make outlays, the budget authority for which is not provided in advance by appropriation Acts;
>
> (2) to incur indebtedness (other than indebtedness incurred under chapter 31 of title 31 of the United States Code) for the repayment of which the United States is liable, the budget authority for which is not provided in advance by appropriation Acts;

(3) to make payments (including loans and grants), the budget authority for which is not provided for in advance by appropriation Acts, to any person or government if, under the provisions of the law containing such authority, the United States is obligated to make such payments to persons or governments who meet the requirements established by such law;

(4) to forego the collection by the United States of proprietary offsetting receipts, the budget authority for which is not provided in advance by appropriation Acts to offset such foregone receipts; and

(5) to make payments by the United States (including loans, grants, and payments from revolving funds) other than those covered by subparagraph (1), (2), (3), or (4), the budget authority for which is not provided in advance by appropriation Acts.

Under this definition, this measure does not contain new spending authority.

Section 3(a)(10) of the Congressional Budget Act defines the term "credit authority" as the authority to incur direct loan obligation or to incur primary loan guarantee commitments.

Under this definition, this measure does not contain new credit authority.

With regard to subdivisions (C) and (D), the cost estimate of the Director of the Congressional Budget Office relative to this measure follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC July 25, 1986.

Hon. PARREN J. MITCHELL,
Chairman, Committee on Small Business, U.S. House of Represenatives, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 5019, the Corporation for Small Business Investment Charter Act.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

JAMES BLUM
(For Rudolph G. Penner, Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 5019.

2. Bill title: Corporation for Small Business Investment Charter Act

3. Bill status: As ordered reported by the House Committee on Small Business, July 23, 1986.

4. Bill purpose: H.R. 5019 would create a Corporation for Small Business Investment Companies (COSBI) that would have the status of a government-sponsored enterprise. The bill would allow the Treasury, at its discretion and subject to appropriations, to purchase up to $500 milion in COSBI obligations.

The corporation would be capitalized by a $15 million sale of preferred stock to small business investment companies (SBICs). The bill directs the Treasury to sell to COSBI it portfolio of 100 percent guaranteed loans made to SBICs and maturing beyond 1987. This portfolio is estimated to have a par value of about $950 million. The bill specifies that the loans should be sold for $100 million below the par value and that the transaction should occur in 1987. The bill would also allow the purchase of debentures due in 1987, under certain conditions.

H.R. 5019 would also authorize the Small Business Administration (SBA) to transfer about $300 million in preferred stock and debentures that the agency owns in minority small business investment companies (MESBICs) to a newly created MESBIC Trust. This special purpose trust would operate in conjunction with COSBI, and provide financial assistance to MESBICs. The bill would also direct COSBI to pay $100 million to capitalize the MESBIC Trust.

As amended, H.R. 5019 would prohibit COSBI from selling the newly purchased SBIC debenture for three years. It would require that any difference between the interest earned on the SBIC portfolio and cost of funds to COSBI, after expenses, be deposited in a revolving fund and used to reimburse SBA for its net losses on SBIC-guaranteed debentures. After all claims have been paid, COSBI would receive three-fourths and the MESBIC Trust one-fourth of any residual.

5. Estimated cost to the Federal Government: The table below shows the budget impact of the bill relative to both current law and the resolution baseline. The treatment of the sale of 10 percent guaranteed loans in the table below is consistent with the guidelines for reconciliation scoring established by the House Budget Committee.

[By fiscal years, in millions of dollars]

	1987	1988	1989	1990	1991
Direct spending:					
Estimated budget authority		97	89	82	75
Estimated outlays	−850	182	167	153	139

In addition, further savings may be realized over the next 15 years if SBA is reimbursed by COSBI for defaults on SBIC debentures. Because the reimbursement depends upon the cost of COSBI funds and other uncertainties, CBO is not able to estimate the extent to which these savings would be realized.

CBO believes that this budgetary treatment does not represent the true nature of the transactions required under H.R. 5019, because the sale of federal loan assets with a guarantee is a form of borrowing. If scored as borrowing, the sale of the 100 percent guaranteed SBIC debentures would result in no reduction in outlays in 1987, and increased outlays in subsequent years. CBO will use such scoring in estimating the deficit for the purposes of the Balanced Budget and Emergency Deficit Control Act of 1985. This transaction would result in a net cost to the government, largely because the government would receive $850 million for the SBIC debentures having an estimated market value of about $1.1 billion.

The costs of this bill fall within budget functions 370 and 900.

Basis of Estimate: For purposes of this estimate, CBO assumed that COSBI would purchase the SBIC portfolio from the Treasury at the end of fiscal year 1987, and that SBIC debentures having a par value of about $950 million would be transferred at that time. The proceeds from the sale would be $850 million, however, because $100 million would be used to capitalize the MESBIC Trust. (CBO estimates the market value of these assets to be about $1.1 billion.) Outlays would increase in 1988 and beyond because the government would no longer receive principal repayments on the debentures; both budget authority and outlays would be reduced in 1988 and beyond because of the interest forgone on the debentures.

We estimate that SBA would transfer to the MESBIC Trust about $300 million in MESBIC debentures and preferred stock. Lost principal and interest would reduce collections received by SBA's business loan and investment fund by about $15 million a year beginning in 1988.

The bill does not specifically eliminate new funding for MESBIC, nor prohibit SBA from issuing new SBIC guarantees. As a result, we have not shown a reduction relative to current law or the baseline for these programs.

6. Estimated cost to State and local governments: COSBI and its holdings would be exempt from state and local taxes. It is not possible to estimate with any precision the effect of this provision to these government entities, however.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Mary Maginniss.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

Sometimes in the past the Committee has found occasion to quarrel with cost estimates supplied by the Congressional Budget Office and with the assumptions and interpretations of fact which lie behind them. Never before, however, have we found it necessary to question them in the Committee's report, but this time CBO's views are so bad that we cannot simply insert them into the body of the report without comment.

Although CBO "scores" this measure as saving some $501 million in outlays over Fiscal Years 1987, 1988 and 1989 "consistent with the guidelines for reconciliation scoring established by the House Budget Committee", it goes on to state that "this budgetary treatment does not represent the true nature of the transactions * * * because the sale of Federal loan assets with a guarantee is a form of borrowing * * * (which) would result in no reduction in outlay * * *".

Thus what CBO is saying is that if we sell a debenture which is issued by a small business investment company and which is already 100 percent guaranteed by the Small Business Administration we must eliminate the guarantee or there is no savings resulting from the sale. This is absurd. The asset with a guarantee does not increase the government's exposure one iota; SBA is already on the hook for any loss which results; what CBO wants is a reduction in the present level of exposure and seems to be willing to pay virtually any price in order to obtain it.

The Committee evaluated the yield which we would obtain from selling these debentures with the guarantee as compared to the yield if we deleted it. As part of our evaluation we contacted the Wall Street brokers who would sell this type of instrument and requested their advice. Although all were reluctant to evaluate a portfolio without examining it in detail (which has not been done to date), they did estimate that the portfolio could be sold at its face value with the guarantee but that without a guarantee it would bring $.50 or $.60, with some give or take, on the dollar. We compared these estimates of deep discounts with the losses we would expect to incur due to defaults if the guarantee was not eliminated. Historically, these losses on the SBIC program have run less than 6 percent, although the ultimate loss rate might be as high as 8 or 9 percent. On the other hand, some claims already have been paid on the outstanding portfolio and thus it is overstating loss expectations unless these are subtracted before applying any loss percentage.

In any event, for sake of argument, even if losses were 8 percent against the entire gross portfolio of $1.04 billion, the losses would amount to $83.2 million. This would be the maximum that would be saved by selling the portfolio without a guarantee. On the other hand, even using the high estimate of $.60 on the dollar as the expected selling price for the debentures without a guarantee we would be losing 40 percent or $416 million. Obviously the Committee did not favor losing $416 million in order to incur savings of $83.2 million even if CBO thinks it is a good deal.

In addition, CBO's conclusion that the portfolio must be sold without recourse in order to achieve savings ignores the provisions of the conference report on S. Con. Res. 120, The Concurrent Resolution On The Budget-Fiscal Year 1987 (H. Rept. 99-664). On page 29 in discussing loan asset sales "The conferees hope that the appropriate committees of the Congress will consider legislation that establishes specific guidelines for the sale of these assets. Such legislation should address the process and terms of asset sales, including whether there should be any form of Federal guarantee and what kind of protections should be provided to borrowers.

> The conferees believe that specific legislative guidelines for loan asset sales should be established to insure that the sales occur successfully and expeditiously without adverse consequences.

Thus both the House and Senate Budget Committees specifically are leaving the question of a Federal guarantee to the authorizing committees involved in the sale. Isn't it ironic that both Budget Committees can say that the authorizing committees have a choice but CBO can then come along and then say no they don't.

Again both the House and Senate Budget Committees have left it to the authorizing committee to determine protection to be provided to the borrowers. Again here comes CBO and says oh no, the sale must be without any guarantee or protection and the purchaser must be given the absolute discretion to strictly enforce all payments in order to maximize the rate of return he or she receives without regard to any adverse impact on the borrower, the borrower's employees, or the community.

Finally, both the House and Senate Budget Committees have stated their belief that the sale should be without adverse consequences and yet along comes CBO and determines that it is not an adverse consequence for the government to lose $416 million in order to eliminate a contingent liability of $83.2 million.

No oversight findings or recommendations have been made by the Committee on Government Operations with respect to the subject matter contained in this measure.

In compliance with clause 2(l)(4), the Committee concludes that the provisions of this legislation in and of themselves will have no inflationary impact on prices and costs in the operation of the national economy.

In compliance with clause 7, rule XIII of the House of Representatives, the Committee makes the following statement:

The costs attributable to this measure for the current fiscal year and for fiscal year 1987-91 are as follows:

The measure will result in large savings to the Government, not costs. These savings result from proceeds from the sale of assets, interest income that can be earned from investment of the proceeds, elimination of the need for annual capital appropriations to support the MESBIC program, elimination of those SBA salaries and expenses attributable to the program which will now be borne by the private sector, and improvement in the economy, particularly increased innovation, employment, and payment of taxes.

COSBI will purchase the existing outstanding portfolio of SBA-guaranteed debentures now being held by the Federal Financing Bank. The Small Business Committee's specific estimate of "savings" for reconciliation purposes is as follows:

	Millions
Gross sales price in 1987	$1,040
Transfer to MESBIC trust	−100
Lost normally expected payments in 1987	−90
Gross savings in 1987	850
Lost normally expected payments in 1988	−170
Lost normally expected payments in 1989	−155
Savings 1987 through 1989	525

In addition, there are other savings not recognized for reconciliation purposes which nonetheless constitute real savings.

First, the Government will have the use of the proceeds from the sale of these debentures and can either invest these funds and earn interest or use them to retire outstanding debt and save interest costs. In either case during the next three years, initially there would be available $850 million for investment. This amount would be reduced periodically over the three-year term by the amount which would normally be repaid on principal or paid on interest which the Government would receive anyway. Using even a modest 6 percent interest rate would yield a savings of an additional $100 million.

Second, there will no longer be a need for an annual capital appropriation to the MESBIC program. Annually Congress has appropriated approximately $40 million per year to provide additional capital so that SBA can purchase debentures and preferred stock to support the minority enterprise SBICs. This function will now be performed by a MESBIC trust which is being established as part of COSBI. Computed over three years, this will result in an additional savings of $120 million.

Third, the regulatory and financial activities of SBA to support the SBIC and MESBIC programs will no longer be necessary as COSBI will do this. Again, this eliminates the need for about $4 million each year in salaries and expenses and over the next three years will result in an additional savings of $12 million.

Fourth, COSBI will provide small business access to the major capital markets, and should, in just a few years, increase the flow of venture capital to small firms by hundreds of millions of dollars, perhaps billions. Because small business is the major job creator and innovator in the American economy, increased capital venture investments flowing through the new system will create thousands of new jobs in a wide variety of industries as well as thousands of product innovations, technologies and new commercial applications.

No cost estimate was submitted by any Government agency on this measure to your Committee.

In your Committee's opinion, the above statements fully comply with the Rules of the House of Representatives.

SECTION-BY-SECTION ANALYSIS

Section 1. This section provides that the Act may be cited as the "Corporation for Small Business Investment Charter Act."

Section 2. This section amends section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662) by redefining one of the terms defined therein, and adds the definitions of certain terms used in the Act.

Subsection (a) adds the phrase "or a company qualified to conduct business with the Corporation under section 357 of this Act" to the definition of "small business investment company," "company" and "licensee."

Subsection (b) modifies the definition of "small business concern" to provide that for purposes of Title III of the Act, a "small business concern" is one that is independently owned and operated, is not dominant in its field of operations, does not have net worth in excess of $7,000,000 and does not have average net income for the preceding two years in excess of $2,500,000. This latter size standard is subject to an annual inflation adjustment. In the alternative, the size qualification also may be met under standards established by the Small Business Administration (the "Administration").

Subsections (c), (d) and (e) add nine new definitions to the end of section 103. New paragraphs (9) and (10) define the terms "Corporation" and "Board of Directors" to mean the Corporation for Small Business Investment and its Board of Directors. New paragraph (11) defines "disadvantaged small business concern" as a small business concern owned by a person or persons whose participation in the free enterprise system is hampered because of social or economic disadvantages. New paragraph (12) defines the term "law" to include any law or rule of law or equity of the United States or any State. New paragaph (13) defines the term "organization" to mean any corporation partnership, association, business trust or other business entity. New paragraph (14) provides that the term "security" has the meaning ascribed to it by Section (2) (1) of the Securities Act of 1933. New paragraph (15) defines the term "small business investment security" to include debentures, bonds, promissory notes, obligations or securities currently issuable by small business investment companies plus such other small business investment company securities as the Corporation may permit to be issued. New paragraph (16) defines "private capital" of a small business investment company to be the combined private paid-in capital and paid-in surplus or, in the case of an unincorporated small business investment company, the permanent partnership capital. New paragraph (17) defines "licensee in good standing" to mean licensee as defined in the Act unless such licensee is in default under the provisions of preferred securities or debentures or such securities have been declared due and payable by the Administration or the licensee is in liquidation for regulatory reasons.

Section 3. Title III of the Small Business Investment Act of 1958 is amended by adding a new section 322. Subsection (a) provides that a licensee in good standing shall have three months after the date the Corporation gives notice to the Administration that it is ready to conduct business to qualify under sections 357 or 359. Section 357 establishes the criteria for qualification of small business investment companies to conduct business with the Corporation and section 359 establishes the criteria for qualification of special small business investment companies to do business with the Trust.

Subsection (b) provides that within six months after the Administration receives notice (under section 352(h) of the Act) that the Corporation is prepared to do business, the Administration shall promulgate rules and regulations to effect the orderly termination of any licensee in good standing which has not qualified under sections 357 or 359 of the Act, and the Administration shall contract with the Corporation to administer these regulations.

Subsection (c) provides that such rules and regulations shall suspend the licensee's authority to obtain financing or financial assistance from the Administration. The revocation of license must be effective within two years of the publication of the rules and regulations except such revocation may be delayed to within two years of the maturity of preferred securities or debentures of a licensee.

Subsection (d) provides that the Administration shall furnish to the Corporation all of its books and records necessary to carry out the provisions of the Act within thirty days of a written request by the Corporation unless the Administrator certifies that such books and records are not available within such time. Information on individual licenses shall not be furnished unless the licensee has agreed to such release. Information furnished by the Administration to the Corporation shall be kept confidential.

Section 4. Title III of the Small Business Investment Act of 1958 is amended by revising the table of contents and by inserting the heading "Part A" prior to section 301.

Section 5. The Small Business Investment Act of 1958 is amended by inserting the heading "Part B" at the end thereof.

A new Section 351 entitled "Purposes" is added.

This section sets forth the purposes of Part B of the Act. It is declared that the purposes of this Part of the Act are (1) to establish a Government-sponsored private corporation, financed by private capital, which will serve as a secondary market and warehousing facility for loans to and investments in small business investment companies, and will provide liquidity for small business loans and investments; (2) to encourage the formation of new small business investment companies to stimulate and supplement the orderly and necessary flow of private equity capital and long-term loan funds to and improve the distribution of investment capital available for small business concerns; and (3) to provide for an orderly transfer of certain functions of and securities guaranteed or owned by the Small Business Administration to the Corporation for Small Business Investment as constituted under the Act. These purposes reflect the belief that a government-sponsored private corporation financed by private capital can more appropriately, efficiently and profitably stimulate investment in small business investment companies.

New section 352 is entitled "The Corporation for Small Business Investment."

Subsection (a) establishes a corporation to be known as the Corporation for Small Business Investment (the "Corporation") which would have succession until dissolved. The Corporation would maintain its principal office in the District of Columbia and would be deemed to be a resident and citizen of the District for purposes of venue and jurisdiction in civil actions. Finally, the Corporation would be authorized to establish offices wherever necessary or appropriate for the conduct of its business.

Subsection (b) provides that the Corporation, as an instrumentality of the United States, would be exempt from State taxation, except that any real property of the Corporation would be subject to the same extent that other property is taxed. The Corporation would not be exempt from federal income taxes.

Subsection (c) provides that until the permanent Board of Directors is designated, the President would appoint an interim Board of Directors consisting of five members, one of whom would be designated by the President as interim Chairman. The interim Board would be appointed by the President within sixty days of the enactment of the Act. Of the five members, two would be representative of small business, two would be representative of small business investment companies, and one would be the Small Business Administration Administrator. The main function of the interim Board is to arrange for an initial offering of common stock of the Corporation and to take whatever other actions are necessary to proceed with the operations of the Corporation.

Subsection (d) provides for a permanent Board of Directors consisting of fifteen persons. When $15,000,000 of common stock of the Corporation has been purchased by small business investment companies, the holders of common stock would then elect ten members of the Board of Directors. The remaining five would be appointed by the President.

Subsection (e) provides that once the events described in paragraph (d) have occurred, the interim Board would turn over control of the affairs of the Corporation to the permanent Board. The directors appointed by the President would serve at the pleasure of the President and until their successors have been appointed and have qualified. At least one of the directors appointed by the President must be from a special small business investment company, operating under section 359 of the Act. Two directors shall be representative of small business. The directors elected by the common stockholders would each be elected for a term ending on the date of the next annual meeting of the common stockholders of the Corporation, and would serve until their successors have been elected and have qualified. Any appointive seat on the Board which becomes vacant would be filled by appointment of the President and any elective seat on the directors would be filled by the Board, but only for the unexpired portion of the term.

Subsection (f) sets forth the responsibility of the Board for determining the general policies which would govern the operations of the Corporation and for selecting, appointing, compensating and prescribing the functions, powers and duties of the executive officers of the Corporation.

Subsection (g) provides that the Corporation would have the normal powers exercised by a corporation including the power to sue and be sued, to use a corporate seal, to adopt bylaws, to conduct business in any state, to deal in various ways with property, to appoint and dismiss officers and employees, to enter into contracts, and to exericse other specified or necessarily incidental powers.

Subsection (h) provides that when the permanent Board of Directors is duly constituted and the Corporation is ready to conduct business, it shall so notify the Administration.

A new section 353 is entitled "Common and Preferred Stock."

Paragraph (a)(1) of this section provides that the Corporation shall have voting common stock which may be issued only to small business investment companies. Each share of common stock shall have such par value as the Board of Directors may fix from time to time. Each share is entitled to one vote with cumulative voting rights at the elections of directors. The maximum number of authorized shares of voting common stock of the Corporation shall be 100,000,000 shares. This maximum number of authorized shares may be increased or decreased by an affirmative vote of a majority of the total outstanding shares. Such stock is freely transferable except as to the restriction on retention by small business investment companies for three years in subparagraph (5)(B) below and that, as to the Corporation, it is transferable only on its books.

Paragraph (a)(2) provides for nonvoting common stock and that the number of authorized shares of nonvoting common stock of the Corporation shall be 100,000,000 nonvoting common stock. This maximum number of authorized shares may be increased or decreased by an affirmative vote of a majority of the total outstanding shares.

Paragraph (a)(3) provides that holders of voting and nonvoting common stock shall not have preemptive rights.

Paragraph (a)(4) provides that the Corporation will raise funds for its capital surplus account by requiring nonrefundable capital contributions from each small business investment company, not to exceed, in total, two per cent of the private capital of each such company. In addition, the Corporation may require small business investment companies which sell securities to the Corporation to make, or to commit to make, capital contributions not to exceed one per cent of the unpaid principal balance of such securities.

Paragraph (a)(5) provides that the Corporation will issue shares of its common stock to each small business investment company to evidence any capital contributions made pursuant to paragraph (a)(4) of this section. It is further provided that the Corporation may issue additional shares of nonvoting common stock in return for appropriate payments into capital or capital and surplus. Thus, the Corporation is authorized to issue nonvoting common stock to the general public. Any dividends declared by the Board of Directors are to be paid by the Corporation to the holders of its common stock. Common stock issued to small business investment companies under paragraph (a)(5) must be retained for three years, subject to such conditions as may be established by the Corporation.

Paragraph (a)(6) of this section provides that, notwithstanding any other provision of law, any depository institution as defined in section 19(b)(1)(A) of the Federal Reserve Act, is authorized to make capital contributions to the Corporation as provided in this subsection, and to receive nonvoting common stock evidencing its contributions. This authorization is intended to encourage the purchase of Corporation stock by depository institutions which generally are prohibited from owning stock in other entities.

Subsection (b)(1) authorizes the Corporation to issue a class of nonvoting preferred stock. Under the Act, if the Corporation so prescribes, such stock could be converted into voting or nonvoting common stock of the Corporation.

New section 354 is entitled "Obligations and Securities."

Subsection (a) of this section authorizes the Corporation (after approval by the Secretary of the Treasury) to issue obligations with maturities, rates of interest and terms and conditions as set by the Corporation. At the option of the Corporation, such obligations could be redeemed before maturity. This subsection makes clear that these obligations are not guaranteed by the United States and do not constitute a debt or obligation of the United States or any agency or instrumentality thereof other than the Corporation. The Corporation is authorized to purchase in the open market any of these obligations at any time and at any price. Finally, the Corporation can prescribe that any obligation or security can be sold in definitive form or in book entry form with or without delivery of physical evidence of ownership.

Subsection (b) provides that the Corporation may issue subordinated obligations with such maturities and rates of interest as set by the Corporation. At the option of the Corporation, these obligations could be redeemed before maturity, and may be convertible into shares of common stock.

Subsection (c) provides discretionary authority for the Secretary of the Treasury to purchase any obligations issued by the Corporation and authorizes the Secretary to utilize the proceeds of the sale of any securities under the Second Liberty Bond Act for the acquisition of any obligations of the Corporation.

The prospective Treasury acquisitions are limited in several important respects. First, the amount of such holdings must be approved in advance through appropriation Acts of the Congress. Second, the holdings authorized under this subsection cannot exceed $500,000,000 at any time. Moreover, the yield must be at a rate determined by the Secretary in relation to the current average rate on outstanding Treasury obligations of comparable maturities. This will assure yields comparable to other Treasury holdings. The Secretary is authorized to sell the obligations of the Corporation at any time, price and upon any conditions and to treat such sales or redemptions as public debt transactions.

New section 355 is entitled "Legal Investments and Exempt Securities."

This section makes all obligations issued by the Corporation lawful investments acceptable as security for all fiduciary, trust and public funds under the authority or control of the United States. The stock and obligations issued by the Corporation would be classified as exempt securities under the laws administered by the Securities and Exchange Commission. The Corporation is deemed to be an agency of the United States for the purposes of section 355(2) of title 12 which gives the obligations of the Corporation the same investment status as other federally guaranteed obligations of the United States. With this status, the obligations of the Corporation would be considered liquid investments and, thus, could be used to satisfy reserve requirements of banks and savings and loan associations. Finally, for purposes of the Bankruptcy Code, and, specifically section 101(33) of title 11, the Corporation would be deemed to be a corporation and not a governmental unit; consequently, the U.S. Government does not by law have first priority over other creditors in the event of dissolution, liquidation or winding up of the business of the Corporation. For purposes of section 101(39) of title 11, however, the Corporation would be deemed to an agency of the United States for the purpose of inclusion of its obligations within the provisions of the Bankruptcy Code relating to repurchase agreements.

New section 356 is entitled "Loan and Investment Operations."

Subsection (a) of this section authorizes the Corporation to issue commitments or otherwise deal in securities issued by small business investment companies after the permanent Board of Directors has been duly constituted and Administration-guaranteed debentures purchased under section 361 of the Act.

Subsection (b), which essentially restates section 1087-2(a)(2) of title 20, U.S.C. simplifies the procedure for perfecting a security or ownership interest in small business investment securities created by the Corporation or by an eligible small business investment company. Notwithstanding the provisions of any state law to the contrary, including the Uniform Commercial Code as in effect in any State, a security or ownership interest in small business investment securities created by the Corporation or by any small business investment company may be perfected either through taking possession of such securities or by filing notice of an interest in such securities in the manner provided by State law for perfection of security or ownership interests in accounts.

Subsection (c) authorizes the Corporation to guarantee securities based on or secured by pools or trusts of the small business investment securities eligible for purchase by the Corporation under this section. The Corporation is further authorized to act either as an issuer or guarantor of such securities.

Subsection (d) provides that these securities may be in the form of debt obligations secured by pools of loans, or trust certificates of beneficial ownership in such pools of loans, or both.

Subsection (e) provides that nothing in this section shall be construed to impede small business investment companies operating under section 359 of the Act from receiving a proportionate and fair share of available funds.

New section 357 is entitled "Qualification of Small Business Investment Companies."

Subsection (a) restates the criteria of 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. 681(c)) for determining the qualification of small business investment companies to conduct business with the Corporation. It specifies some of the factors (business reputation and character of the owners, and the probability of success of the proposed company) which must be taken into consideration in determining qualification. This section also provides that any small business investment company that is currently licensed and approved by the Small Business Administration to operate under the provisions of the Small Business Investment Act of 1958 is automatically qualified to operate under the provisions of the Act if such company subscribes to stock of the Corporation, as provided in section 353(a) of the Act, contracts with the Corporation, as provided in section 358(a) of the Act, and authorizes the release of records, as provided in section 322(d) of the Act.

Subsection (b) essentially restates section 302(a) of the Small Business Investment Act of 1958 (15 U.S.C. 682(a)) with the exception that the specific minimum private capital requirements of that section have been increased from $500,000 to $1,000,000, the current minimum requirement of th Small Business Administration. Under the Act, it is required that each small business investment company have sufficient private capital to assure sound and profitable operations and active an prudent management.

Subsection (c) restates the provisions of section 302(b) of the Small Business Investment Act of 1958 (15 U.S.C. 682(b)) which permits the purchase of ownership interests in small business investment companies by national banks, and by other Federal Reserve member banks and FDIC-insured banks when not prohibited by State law, up to an aggregate of 5 percent of the bank's capital and surplus. This authorization retains the current small business investment company exemption from the Glass-Steagall Act, and, specifically, section 371(c) of title 12, which generally prohibits banks from engaging in non-banking related activities.

Subsection (d) essentially restates section 303(a) of the Small Business Investment Act of 1958 (15 U.S.C. 683(a)) by authorizing small business investment companies to borrow money and to issue obligations therefor, under conditions and rules prescribed by the Corporation. This paragraph goes further, however, and authorizes small business investment companies to purchase stock issued by the Corporation since purchase of such stock will be a prerequisite for qualification as a small business investment company.

Subsection (e) provides that thirty days after the Administration receives notice from the Corporation under section 325(h) of the Act that the Corporation is ready to conduct business, the provisions of sections 301-306, inclusive, sections 308-318, inclusive, and sections 320 and 321 of the Act shall be inapplicable to small business investment companies qualified under section 357 or 359 of the Act.

Subsection (f) provides that all specific references to small business investment companies operating under the Small Business Investment Act of 1958 in any federal or state law or regulation shall now be deemed to refer to and include small business investment companies operating under the provisions of the Act. The foregoing provision is intended to insure that small business investment companies are accorded the same treatment under the Act as they currently enjoy under other statutes that make reference to small business investment companies operating under the provisions of the Small Business Investment Act of 1958. References to small business investment companies can be found in several statutes and regulations including, but not limited to, the following: in the Internal Revenue Code, 26 U.S.C. sections 243(a)(2),. 542(c)(8), 586, 1242 and 1243; in the Investment Company Act of 1940, 15 U.S.C. sections 80–18(k); and in regulations promulgated pursuant to the Internal Revenue Code, 26 C.F.R. section 1.533–1(d), and pursuant to the Investment Company Act of 1940, 17 C.F.R. sections 270.17(a)–6 and 270.18c–2(a).

New section 358 is entitled "Operations of Small Business Investment Companies."

Subsection (a) of this section authorizes the Corporation to enter into agreements with small business investment companies governing the operations of such companies to carry out the provisions of the Act. This gives the Corporation the general authority to establish criteria for the operations of small business investment companies.

Subsection (b) essentially combines the provisions of sections 304(a) and 305 (a) and (b) of the Small Business Investment Act of 1958 (15 U.S.C. 684(a) and 685(a)(b)) by authorizing small business investment companies to make equity investments and loans directly or in cooperation with other investors or lenders on a participation or guaranteed basis.

Subsection (c) adopts SBA's current regulations which provide that small business investment companies shall engage only in the activities contemplated by the Act and in no other activities.

Subsection (d) restates the provisions of section 312 of the Small Business Investment Act of 1958 (15 U.S.C. 687d). For the purpose of controlling conflicts of interest, the Corporation is empowered to adopt rules governing transactions between or among small business investment companies and persons interested in them as officers, directors, shareholders or partners.

Subsection (e) provides that the Corporation shall adopt rules that will prevent small business investment companies from assuming control over small business concerns, except under limited conditions, such as situations where it was necessary to do so to protect an investment. This provision is a restatement of the Administration's current control regulation.

Subsection (f) provides that financings of small business concerns by small business investment companies shall be for a minimum period of five years. In the case of small business investment companies operating under section 359 of the Act, the minimum period is four years. This provision is consonant with one of the purposes of the Act which is to provide long-term loan funds to small business concerns and conforms with current Small Business Administration regulations.

Subsection (g) restates the provisions of section 306(a) of the Small Business Investment Act of 1958 (15 U.S.C. 686(a)) to provide that a small business investment company may not acquire obligations or securities for any single enterprise in excess of 20 percent of its private capital without the approval of the Corporation. In the case of small business companies operating under section 359 of the Act, this limitation is 30 percent.

Subsection (h) prohibits small business investment company investments in small business concerns for relending, foreign investments, passive investments or the acquisition of farm land. The prohibition also are contained in current Small Business Administration regulations.

Subsection (i) provides that each small business investment company shall be subjected to an annual audit and shall make such reports as the Corporation may require. These audits could be made by independent auditors acceptable to the Corporation or the Corporation itself, in its discretion. The Administration shall have access to any financial audit or certified financial report filed with the Corporation by small business investment companies having outstanding small business investment securities which are held by or guaranteed by the Administration.

Subsection (j) provides that the Corporation shall adopt appropriate measures to assure compliance by small business investment companies with the provisions of section 358 of the Act. It follows those provisions of sections 309 through 315, inclusive, of the Small Business Investment Act of 1958 (15 U.S.C. 687) that specify grounds for administrative action against small business investment companies.

Subsection (k) restates section 308(i)(1) of the Small Business Investment Act of 1958 (15 U.S.C. 687(i)(1)). It declares that the purpose of this subsection is to facilitate the orderly and necessary flow of long-term loans and equity funds from small business investment companies to small business concerns. Any business loan made by a small business investment company pursuant to the provisions of the Act is exempt from the provisions of the Constitution or the laws of any State that expressly limit the rate or amount of interest, discount points, finance charges or other charges that may be imposed by lenders. However, such exemption can be overriden if a State adopts a law or certifies that the voters of such State have voted in favor of a provision which states explicitly that such exemption does not apply to business loans made in such State. Even if a State overrides the exemption by passing a law or certifying voter action, such law or certification will not apply to any loans made by a small business investment company pursuant to a commitment to make such loan after the effective date of the Act and prior to the date such law was passed or such certification occurred.

New section 359 is entitled "Special Small Business Investment Companies."

The provisions of this section essentially continue the existing special small business investment program (i.e., the Minority Enterprise Small Business Investment Company Program) of preferred security purchases and subsidized interest rates for five year terms. In place of the Administration, these benefits would be provided by the Trust created in the section.

Subsection (a) of this section is essentially a restatement of section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)). It requires that the Corporation adopt reasonable criteria for the qualification of a "special type of small business investment company" the investment policy of which is to facilitate ownership in small business concerns by persons whose participation in the free enterprise system has been hampered because of social or economic disadvantages.

Subsection (b) creates a special-purpose trust (the "Trust"). The Trust would be administered under a trust agreement between the Corporation and five trustees, three of whom would be nominated by the MESBICs and appointed by the Board of Directors of the Corporation. At least three of the trustees must be persons from special small business investment companies. One trustee would be appointed by the President and one trustee would be the Chairman of the Board of Directors of the Corporation, or his designee. The trustees nominated by special small business investment companies and appointed by the Board of Directors of the Corporation would have three year terms and could not be reappointed for more than two consecutive terms. The trustees of the Trust would have full authority to administer, sell, invest and reinvest the trust estate, subject to the "prudent man" rule for fiduciaries. The Trust would establish separate accounting for all such preferred securities, debentures and other funds held in trust and would provide an annual accounting of its operations under this subsection to the Secretary of the Treasury.

Subsection (c) provides that within 30 days after the Administration receives notice from the Corporation (under section 352(h)) that it is prepared to conduct business, the Administration shall convey all preferred securities and debentures issued by small business investment companies under section 301(d) of the Act to the Corporation in trust.

Subsection (d) provides that the trust corpus and income shall be administered in the following manner: (1) to cover any losses on the preferred securities or debentures held in trust, preferred securities purchased by the Trust or debentures purchased or guaranteed by the Corporation; (2) to reduce the interest rate on debentures purchased or guaranteed by the Corporation under subsection (e) of this section; (3) to purchase preferred securities under subsection (e) of this section and (4) to cover operating costs of the Trust.

Subsection (e) authorizes the trustees to purchase preferred securities and the Corporation to purchase or guarantee debentures of special small business investment companies. The Trust's purchase of such non-voting securities is subject to such terms and conditions as determined by the Trust, including: (1) dividends are preferred; (2) on liquidation or redemption, the Trust is entitled to the preferred payment of the par value of such securities; (3) the purchase price shall be $50,000 or more and (4) the amount of such securities purchased by the Trust shall not exceed 200 per centum of the private capital of such company. Also, the amount of such securities purchased by the Trust in excess of 100 per centum of such private capital may not exceed an amount equal to funds invested in venture capital by such company as determined by the Trust.

The Corporation is authorized to purchase or guarantee debentures issued by special small business investment companies. The rate of interest on such debentures shall be determined by the Corporation based upon comparable small business investment securities purchased by the Corporation reduced to a lower rate provided by the Trust, not to exceed three per centum per annum. The amount of debentures purchased or guaranteed or transferred to the Corporation under subsection (c) of this section shall not exceed 400 per centum of a company's private capital less the amount of preferred securities outstanding.

Subsection (f) provides that the benefits of this section may be extended to special small business investment companies owned, in whole or in part, by other small business investment companies.

Dividends on the preferred securities, interest on the debentures, gains on sales of securities and other income of the Trust would be exempt from federal, state and local taxes under paragraph (g).

Subsection (h) provides that the Trust will terminate fifty years after the effective date of the Act. All of the preferred securities outstanding will be redeemed and the corpus and interest of the Trust, less any funds owed to the Corporation, will be transferred to the U.S. Treasury.

New section 360 is entitled "Audits and Reports."

Subsection (a) of this section provides that the Administration shall have review authority over the Corporation to insure that the public purposes of the Act are carried out. This review applies specifically to the Corporation's criteria for qualification of small business investment companies to conduct business with the Corporation and the Corporation's agreements, rules and regulations governing the operations of small business investment companies. It does not extend to the Corporation's internal operations, such as personnel, salary and other corporate matters, or to the operations of individual small business investment companies.

Subsection (b) provides that the Administration may examine the books and records of the Corporation and may require the Corporation to make reports to the Administration. The Administration shall report to the Congress on its reviews under this section no later than January 31 of each year.

Subsection (c) requires an annual audit of the accounts of the Corporation to be performed by an independent certified public accountant and such report must be furnished to the Secretary of the Treasury.

Subsection (d) requires the Secretary of the Treasury to deliver a report of each fiscal year audit of the Corporation to the President, and to the Small Business Committees of the Congress within six months of the end of such fiscal year. In addition to a normal report of the fiscal structure of the Corporation, the report is to include recommendations as the Secretary deems advisable and any indication of impairment of capital or insufficient capital. The Corporation also is subject to audit by the General Accounting Office at the request of either of the Small Business Committees of the Congress, as long as the Corporation holds small business investment securities guaranteed by the SBA and acquired pursuant to section 361 of the Act.

Subsection (e) requires the Corporation, as soon as practicable after the end of each fiscal year, to transmit to the President, the Small Business Committees of the Congress and the Administrator of the Small Business Administration, a report of its operations and activities during each year.

New section 361 is entitled "Transfer of Small Business Administration Guaranteed Securities to the Corporation."

This section provides for the sale during fiscal year 1987 to the Corporation of the Federal Financing Bank's portfolio of Administration-guaranteed debentures issued by small business investment companies due in fiscal year 1988 or later. The acquisition by the Corporation shall be with full recourse to the full faith and credit guarantee of the Administration. If the Corporation is operational in fiscal year 1987, it could acquire debentures maturing in fiscal year 1987. The Corporation would pay cash for such securities in fiscal year 1987 at a price equal to the outstanding principal balance of the securities. $100,000,000 of the purchase price would be paid to the Trust created under section 359 of the Act to carry out the trust functions of the Trust. The securities may not be sold by COSBI for a period of three years. The sale contemplates the substitution of private financing for the obligations acquired by the Corporation.

New section 362 is entitled "Participating Incentive Revolving Fund."

Subsection (a) establishes a participating incentive revolving fund. Annually and within 30 days of the close of its fiscal year, the Corporation shall determine the difference between the interest income received by the Corporation on guaranteed securities purchased by the Corporation pursuant to section 361 of the Act and the sum of (1) the amount of issuance costs and interest payments made on obligations incurred by the corporation for the purpose of acquiring such guaranteed securities, including any refinancing thereof; and (2) the operating costs of the Corporation to service such guaranteed securities. An amount equal to the difference so computed shall be deposited in the revolving fund within 10 days of the date the determination is made.

Under subsection (b), the Administration shall annually determine the amount of net losses it has realized on account of claims under small business investment company securities guaranteed by the Administration and shall notify the Corporation of the amount so determined. From the revolving fund, including any interest earned thereon, the Corporation shall pay to the Administration an amount equal to such net losses. If the balance in the revolving fund is insufficient to pay the full amount of net losses, any amounts not so paid shall accrue as a charge against the fund and shall be paid at the earliest possible date. Except as a charge against the revolving fund, any such accrued charges shall not be considered a liability of the Corporation.

Subsection (c) provides that fifteen years after the effective date of this Act, the revolving fund shall terminate, provided, that the

Corporation may terminate the revolving fund at an earlier date if the Administration certifies to the Corporation that all net losses on guaranteed securities purchased by the Corportation under section 361 of the Act have been paid and that there will be no net losses in the future under subsection (b) above. Any balances remaining in the revolving fund at the time of termination shall be distributed as follows: seventy-five per centum to the capital surplus account of the Corporation and twenty-five per centum to the Trust created under section 359 of the Act.

Section 6. This section makes technical amendments to the provisions of section 4(c)(5)(of the Small Business Act governing financing functions under that Act and the Small Business Investment Act of 1958; and provides that SBA is relieved of further interest payment obligations to the Treasury on SBIC debentures sold to COSBI.

Section 7. This section amends section 5(b)(2)(of the Small Business Act to prohibit sale os small loans and debentures except by provisions of section 361 of the Small Business Investment Act of 1958.

Section 8. This section is a technical amendment to section 321 of the Small Business Investment Act of 1958 and to section 18005 of the Consolidated Omnibus Budget Reconciliation Act of 1985 of 1985, P.L. 99-272, to correct an error in the enrolling of the bill that became P.L. 99-272.

Section 9. The sixth sentence of the seventh paragraph of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24) is amended by inserting after "Student Loan Marketing Association" the following: "or obligations or other instruments or securities of the Corporation for Small Business Investment", thereby adding these securities to the permitted purchase list.

Section 10. This section provides that the powers and functions of the Corporation and its Board of Directors shall be exercisable, and the provisions of the Act shall be applicable and effective, without regard to any other law.

Section 11. Territorial Applicablility. This section provides that, nowwithstanding any other law, the Act is applicable to the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any other terrorities, possessions and dependencies of the United States.

TITLE X—COMMITTEE ON WAYS AND MEANS

U.S. House of Representatives,
Committee on Ways and Means,
Washington, DC, July 28, 1986.

Hon. William H. Gray III,
Chairman, Committee on the Budget, U.S. House of Representatives, Washington, DC.

Dear Mr. Chairman. Pursuant to the reconciliation instruction contained in S. Con. Res. 120, I am transmitting the recommendations of the Committee on Ways and Means approved in our markup on July 23. As you requested, enclosed are the legislative language, explanatory material and report language, CBO cost estimates of the legislation, and additional views.

Total deficit reduction achieved by the Committee from Fiscal Year 1987 to 1989 is $12.0 billion. This is $.4 billion more than the budget resolution assumed. Concerns have been raised about the fact that the 1987 deficit target was not met. Given Gramm-Rudman and the potential sequester order which might result, these concerns are legitimate. Consequently, I will make every effort to ensure that the target for Fiscal Year 1987 will be achieved.

By a unanimous vote of the Committee, I have been directed to seek a closed rule on the title of the reconciliation bill which contains the recommendations of the Committee on Ways and Means.

If you have any questions, please contact Committee staff.

Sincerely,

DAN ROSTENKOWSKI, *Chairman.*

REPORT TO ACCOMPANY RECOMMENDATIONS FROM THE COMMITTEE ON WAYS AND MEANS

I. SUMMARY

Subtitle A—Social Security Provisions

(1) *Eliminate the COLA Trigger.*—The bill would eliminate the requirement that the increase in the CPI must reach three percent before a COLA is provided to social security beneficiaries. The provision would, therefore, ensure that a social security benefit increase will be paid in the January, 1987, benefit checks. This provision would have the effect of eliminating the trigger for several other automatic adjustments that increase only if a social security COLA is provided (e.g., the FICA wage base, the medicare part B beneficiary premium, and SSI, railroad retirement, and Veterans' pension COLAs).

(2) *State and Local Deposits.*—The bill would relieve the States of the responsibility for collecting the social security contributions of its political subdivisions, and would place all State and local government employers under a depositing schedule that conforms with the frequency required of private employers. This provision would be effective January 1, 1987.

Subtitle B—Public Assistance and Unemployment Compensation Provisions

(1) *Aid to Families With Dependent Children (AFDC) for Unemployed Two-Parent Families (AFDC-UP).*—The bill requires all State AFDC programs to offer coverage to financially eligible two-parent families in which the principal earner is "unemployed," defined as working fewer than 100 hours per month. This is currently a State option. Twenty-four States and two territories do not now provide AFDC to such families.

(2) *Annual Calculation of the Federal Percentage of AFDC Expenditures.*—P.L. 99-272 requires an annual rather than biennial calculation of the Federal AFDC percentage beginning in FY 1987. This results in a loss of AFDC funds to 13 States. The bill restores these funds for FY 1987 only.

(3) *Income and Eligibility Verification System.*—Section 1137 of the Social Security Act requires States to establish an income and eligibility verification system for certain public assistance programs. Under the system, States must request and make use of quarterly wage data and unearned income data supplied by the Internal Revenue Service (IRS). The bill clarifies that Congress intends that the system be targeted to those uses which are likely to be most productive. States would be permitted to prioritize and target the follow-up and review of case records based on the information supplied.

(4) *Two-Year Extension of Temporary Federal Unemployment Tax (FUTA).*—Generally, employers pay FUTA tax of .8% on the first $7,000 in wages paid to an employee. Under current law, the tax will automatically decrease to .6% on January 1, 1988. The bill would extend the tax at the .8 percent rate for two years.

Subtitle C—Medicare and Health Programs

(1) *Limit Increase in Part A Deductible.*—For calendar year 1987, the hospital deductible would be $500. In future years, current law would prevail.

(2) *Hospital Rate of Increase.*—Hospitals would be provided a 1.3% increase in the prospective payment rates for FY 1987 and an increase of the hospital market basket minus 2.0% for FY 1988.

Hospitals exempt from the prospective payment system would be provided a 1.3% increase in the cost limits for FY 1987, and an increase hospital market basket minus 2.0% for FY 1988.

The Secretary of Health and Human Services (HHS) would be required to recalibrate the Diagnostic Related Groups (DRG's) annually.

(3) *Capital Reimbursement under Medicare.*—The rate of increase in aggregate capital expenditures for inpatient hospital services would be capped. The rate of increase for FY 1987 would be limited to aggregate expenditures in FY 1986 plus 10%. The rate of increase for FY 1988 would be limited to aggregate expenditures in FY 1986 plus 20%, and the increase in FY 1989 would be limited to aggregate expenditures in FY 1986 plus 30%. This provision would only apply to PPS hospitals.

(4) *Include Puerto Rico into the Prospective Payment System (PPS) with Appropriate Adjustments.*—The Secretary would be required to include Puerto Rico in the prospective payment system. The rates would be established at a 75% Puerto Rico-specific standardized rate and a 25% national standardized rate.

The Secretary would be required to base the Puerto Rico-specific payments on urban and rural standardized rates. Additional adjustments would be made for indirect teaching costs and for eligible disproportionate hospitals.

The Secretary would be prohibited from restandardizing the national DRG rate to reflect Puerto Rico's inclusion into the prospective payment system.

(5) *Quality Protection.*—The Secretary would be required to develop a plan to refine the prospective payment system for hospitals to adjust for severity of illness. Hospitals would be required to provide a statement of patient rights to beneficiaries. Beneficiaries would

have a right to appeal hospital discharge notices and would not be liable for continued inpatient stay until after the appeal is decided. Hospitals, health maintenance organizations (HMO's), and competitive medical plans (CMP's) would be prohibited from paying physicians to reduce or limit services to beneficiaries. The prohibition would be effective for hospitals six months after enactment and would be effective for HMO's and CMP's on January 1, 1988. HHS would be required to submit a report to Congress by April 1, 1987, concerning appropriate exceptions to the prohibition for HMO's and CMP's. HHS would be required to study the adequacy of medicare's quality assurance standards for hospitals and the need for payment for administratively necessary days.

Hospitals would be required to provide discharge planning. The favorable presumption of the waiver of liability for medical necessity and custodial care denials for hospice, home health and skilled nursing facility services would be extended through September 30, 1989. A waiver of liability would be established for homebound and intermittent care denials for home health services, and a favorable presumption for these denials would be effective through September 30, 1989. HHS would be required to develop a uniform needs assessment instrument and would be required to develop an expedited review process for post-hospital services. Providers would be allowed to bring appeals on behalf of beneficiaries; appeals of technical denials would be allowed. HHS would be required to include information concerning quality in its annual report on prospective payment and would be required to conduct a demonstration project concerning prior authorization for home health and skilled nursing facility services.

HHS would be required to ensure that Peer Review Organizations (PRO's) receive data needed to conduct reviews on a timely basis. PRO review of early readmission cases would be expanded. Each PRO would be required to provide for a reasonable allocation of its quality review effort among all medicare providers. PRO's would be required to appoint a consumer representative to their executive boards and would be required to investigate written complaints about quality of care. Confidential information obtained by PRO's could be shared with national accreditation bodies and with long-term care ombudsmen and state protection and advocacy officials. PRO funding would be increased to cover the cost of the new PRO activities.

HHS would be required to contract with the Institute of Medicine to conduct a study to assist in the development of a long-term strategy for quality assurance.

(6) *Hospital Insurance Trust Fund Off-Budget in 1987.*—The effective date of the provision of the Social Security Act that removes the receipts and disbursements of the Federal Hospital Insurance Trust Fund from the unified budget would be accelerated from FY 1993 to FY 1987.

(7) *Eliminate Periodic Interim Payments (PIP) with Prompt Pay for Providers.*—The periodic interim payment would be eliminated effective July 1, 1987, for all hospitals for inpatient services except for services provided in "disproportionate share" hospitals, sole community hospitals and PPS-exempt hospitals and units. Furthermore, other cost-based providers would continue to receive periodic

interim payments. The Secretary would be required to make advance payments to hospitals, if the hospital can demonstrate that elimination of the PIP option is causing significant financial difficulty.

The Secretary would be required to pay Part A "clean" claims within 22 calendar days of receipt beginning on July 1, 1987. "Clean" claims submitted by participating physicians and suppliers would be required to be paid within 11 days beginning in FY 1988, and within 22 days for nonparticipating physicians and suppliers beginning in FY 1988.

If the claim is not paid in the required time period, a notice must be sent to the beneficiary, physician, supplier or provider submitting the claim to inform them of expected delays. If the claim is not paid or a notice mailed, interest would begin to accrue on the day following the day on which payment was due.

(8) *Health Maintenance Organization Amendments.*—The HMO amendments include provisions regarding, (a) composition of enrollment, (b) authority to impose civil monetary penalties, (c) a study on the adjusted average per capita cost and the adjusted community rate, (d) prompt payment of claims, (e) allowing beneficiaries to disenroll from an HMO at a local Social Security Office, (f) allowing the Health Care Finance Administration (HCFA) access to financial records of subcontractors of HMO's and CMP's and (g) requiring provision of an explanation of patient rights.

(9) *Eliminate Health Maintenance Organization Two for One Rule.*—The requirements that HMO's that had or have a medicare cost contract but which sign a section 1876 risk contract must enroll two new medicare risk contract enrollees before they can convert one medicare cost contract member would be deleted.

(10) *Extend Part B 25% Premium Policy for One Year.*—The existing temporary provision of law whereby the portion of part B program costs financed by premium income equals 25% would be extended for one additional year, through calendar year 1989

(11) *Extend and Modify Limits on Physicians Fee Increases.*—On January 1, 1987, all physicians will receive an increase equal to the Medical Economic Index (MEI) (now estimated to be 3.2%) in prevailing charges above levels in effect during 1986. In future years, all physicians will receive an increase in prevailing charges equal to the MEI. Participating physicians would receive an additional 1% bonus in 1987 and an increase equal to the MEI in 1988 and 1989. The 1 percent would not be included in the base and would not compound in future years.

Nonparticipating physicians could increase their actual charges by the MEI plus 1% in 1987 and by the MEI in 1988 and 1989. The 1% would be included in the base and would compound in future years. Special rules apply for new nonparticipating physicians. The Secretary would be prohibited from revising the MEI on a retrospective basis.

(12) *Programs to Increase Physician Participation.*—A directory of participating physicians would be sent to each beneficiary starting in 1988. Carriers would be required to implement programs to recruit participating physicians and to familiarize beneficiaries with the participating physician program. An incentive pool would be available for distribution to carriers based on their success in re-

cruiting new participating physicians. The medicare provider agreement for hospitals would be amended to require that hospital personnel provide the name of at least one qualified participating physician when referring a beneficiary for follow-up care on an outpatient basis. Physicians would be prohibited from charging for unnecessary services, whether or not assignment is accepted. Physicians providing high-cost elective surgical procedures on an unassigned basis would be required to provide fee information to the beneficiary in advance of performing the procedure.

(13) *Prohibit Administration Regulation on Overpriced Procedures and Require Study.*—The Secretary would be prohibited from using "inherent reasonableness" to establish special reasonable charge limitations for services covered under medicare part B. Payment rates would continue to be determined on the basis of actual, customary and prevailing charges. The Secretary would be required to submit a report to Congress, after consultation with the Physician Payment Review Commission, concerning payment reductions for overpriced procedures.

(14) *Reduce Rates to End-Stage-Renal-Disease (ESRD) Facilities and Physicians and Strengthen Networks.*—The facility composite payment rate would be reduced by approximately $5.50 per treatment (4.5%) based upon more recent data on facility mix, and home/in-facility dialysis mix. The base rate could be no lower than $117.50 for free-standing ESRD facilities and no lower than $121.50 for hospital based facilities.

The monthly capitated payment rate for physicians treating ESRD patients would be reduced by approximately $14 (8%) to reflect the shorter period of time spent on patients who receive their care at home.

The Secretary would be required to establish 17 or more networks to carry out the functions and responsibilities as presently set forth in law, and the responsibilities of the networks would include: (a) collecting, validating and evaluating patient and facility data; (b) conducting on-site review of the medical care provided to beneficiaries in facilities; and (c) implementing a procedure for evaluating and resolving patient grievances.

(15) *Technical Amendments and Miscellaneous Provisions.*—The provision corrects a number of technical errors in the Consolidated Omnibus Budget Reconciliation Act of 1985, P.L. 99-272, and related laws including the disproportionate share, indirect teaching adjustment, prospective payment for skilled nursing facilities, assistants at surgery and direct medical education provisions.

In addition, there are eight other non-cost provisions which would:

(a) Extend the Secretary's authority to enter into two competitively bid contracts under parts A and B of medicare to replace poor performing contracts for three years;

(b) Modify the effective date of disenrollment from medicare when a beneficiary files a notice to disenroll;

(c) Legalize the payment of administrative fees to group purchasing organizations for vendors where full disclosure of such payment is made;

(d) Expand the membership of the Physician Payment Assessment Commission to 13;

(e) Provide a one-year extension of the "pass through" for costs for services of certified registered nurse anesthetists;

(f) Connecticut Hospice, Inc. would be waived for two years from the 80/20 inpatient/home care day requirement. Connecticut Hospice would not be allowed to have more than 50% of total days as inpatient days.

(g) The three-year period granted for rural referral centers status would be extended to four years; and

(h) Require that the Secretary of HHS may not recoup from nor reduce payments to Massachusetts hospitals until January 1, 1988.

(16) *High Risk Health Insurance Pools.*—Once a State has established a health insurance pool, any employer with 20 or more employees who does business in the State, would be required to participate in the insurance pool or face a 5% excise tax on gross wages (as defined in Internal Revenue Code sec. 3401) paid or incurred during the taxable year. To the extent the insurance pool is not self-supporting from premiums, losses would be made up by equitable assessments on all participating employers in the State.

The health insurance pool would be available to all residents of the State regardless of health status. Policies would be designed to offer coverage typical of large employer plans in the State, but premiums charged, in no event, could be higher than 150% of average premium rates for individual standard risks in the State for comparable coverage. Coverage standards would be established for lifetime limits, caps on out-of-pocket expenses, deductibles, coverage for pre-existing conditions and durable medical equipment. A State or other entity could provide payment of part or all of the premium of an enrollee and could vary the amount of the payment based on the enrollee's income or on some other basis.

State Legislatures would have until January 1, 1988, to establish a health insurance pool or until the first January 1st that occurs after the close of their first regular State legislative session.

(17) *Technical Corrections Concerning Private Health Insurance Continuation Coverage.*—There are several technical corrections which would:

(a) Establish a 60-day notification deadline for divorced and legally separated spouses and dependents who no longer qualify as dependents under the plan's definition.

(b) Clarify that a qualified beneficiary may have more than one qualifying event, but the length of coverage could not exceed 36 months;

(c) Clarify that an election by a qualified beneficiary shall be deemed to be an election for all other qualified beneficiaries in the family, but each qualified beneficiary is entitled to make an individual election;

(d) Specify a 30-day period of time (or longer if the plan permits) for which failure to pay the premium would result in termination of coverage;

(e) Clarify that if coverage is modified for all similarly situated beneficiaries, coverage shall be modified for qualified beneficiaries.

(18) *Extend the Private Health Insurance Continuation Coverage.*—The Consolidated Budget Reconciliation Act of 1985 (COBRA)

provision would be amended so that in the event that an employer files for Chaper 11 reorganization on or after July 1, 1986, all the retirees, regardless of the date of retirement, their spouses and dependents, who would lose their employer-based health insurance would have the option to elect to continue in the employer based health insurance plan until the death of the retiree, reemployment, remarriage resulting in coverage from the spouse's plan, or failure to pay the premium. Upon the death of the retiree, the widow and dependents could elect to remain in the health plan for up to three years as defined in COBRA.

Subtitle D—Revenue Provisions

(1) *Extension of Telephone Excise Tax.*—Under current law, a three-percent excise tax is imposed on amounts paid for local telephone service, toll telephone service, and teletypewriter exchange service. This excise tax is currently scheduled to terminate after December 31, 1987. Under the new provision adopted by the Committee, it would be extended at a three-percent rate for two years, through December 31, 1989.

SUMMARY OF DEFICIT REDUCTION

The net deficit reduction achieved by the provision summarized above, over the three-year period from 1987–1989, is $12.0 billion, as shown in the attached table. The deficit reduction target for the Committee on Ways and Means in the House-passed budget resolution is a net of $11.6 billion. This includes $12.6 billion in deficit reduction and $1.0 billion in allowed spending.

Deficit reduction achieved from FY 1987–89

	Millions
A. Budget resolution targets:	
Reconciliation instruction	$12,635
Allowed spending	(1,000)
Net deficit reduction	11,635
B. Committee recommendations:	
Social Security:	
Remove COLA trigger	
Accelerate State and local deposit of payroll taxes	1,846
Public assistance:	
AFDC–UP	(370)
FY 1987 Federal AFDC Percentage	(15)
IEVS targeting	
FUTA repayment tax extension	2,150
Medicare:	
Set hospital deductible at $500 in 1987	(810)
Hospital payment increases of 1.3 percent for FY 1987 and market basket minus 2.0 percent for FY 1988	2,670
Limit aggregate capital payment increases to 10 percent annually	1,100
Include Puerto Rico into PPS system	(45)
Quality protections	(362)
Medicare off-budget in 1987	
Eliminate periodic interim payments with prompt pay for providers	1,621
HMO amendments	
Eliminate HMO 2-for-1 rule	(120)
Extend part B 25 percent premium policy for 1 year	440
Extend and modify limits on physicians fee increases	(50)

	Millions
Programs to increase physician participation	([1] 200)
Disallow administration regulation on overpriced procedures and require study	
Reduce rates to ESRD facilities and physicians and strengthen networks	297
Technical amendments and miscellaneous provisions	
High risk health insurance pools	
COBRA health insurance amendments	
Revenues: Extend telephone excise tax for 2 years	3,627
Total (Net Deficit Reduction)	11,978

[1] Not included in totals. Dollar amounts determined by appropriation action.

Note: Numbers in parentheses indicate the provision will cost, not save money.

II. EXPLANATION OF PROVISIONS

Subtitle A.—Social Security Amendments

1. Elimination of 3-Percent Trigger for Cost-of-Living Increases (sec. 10001 of the bill)

Present law.—The Social Security Act provides for a cost-of-living adjustment (COLA) for benefits under the Old-Age, Survivors, and Disability Insurance program, based on the consumer price index (CPI), if the CPI increases by 3.0 percent or more during a specified base period (currently, the third quarter of the prior year through the third quarter of the current year). If the CPI rises by less than 3.0 percent during the base period, a COLA is not provided. In the following year, however, the COLA is based on the accumulated increase in the CPI over 2 years.

Several other automatic increase provisions are linked to the social security COLA, and are triggered only if the social security COLA is provided. These include the increase in: a) the maximum amount of earnings taxable under FICA and SECA; b) the amount of earnings exempt from the retirement test; c) the Supplementary Medical Insurance (SMI) beneficiary premium; d) railroad retirement, Supplemental Security Income (SSI), and Veteran's pension benefits; and e) certain eligibility standards for medicaid, food stamps, housing assistance, and Aid to Families with Dependent Children (AFDC).

Explanation of provision.—The Committee bill would eliminate the 3 percent trigger for the provision of the social security COLA. A COLA would be provided in any year in which there has been a positive rise in the CPI during the specified base period. This would have the effect of assuring that the other automatic increase provisions linked to the Social Security COLA would also rise in any year in which the CPI rises.

This provision also contains a technical amendment to the SMI program to clarify that in implementing the SMI "hold harmless" provision (mandated by the Deficit Reduction Act of 1984) that the proceeds from rounding social security benefit amounts down to the next lower dollar accrue to the OASDI trust funds.

Effective date.—This provision will be effective for the COLA provided in December 1986.

2. *Deposits of Social Security Contributions by State and Local Government Employers (sec. 10002 of the bill)*

Present law.—Each State may enter into a voluntary agreement with the Secretary of Health and Human Services to provide social security coverage for employees of the State government and any of its political subdivisions. A State which enters into a coverage agreement is liable for collecting and depositing with the Federal government twice a month employer and employee social security contributions on their own behalf and for sub-State entities. Payments of social security contributions are first made by the local subdivisions to the State, which also is responsible for verifying and consolidating the payments. The State then deposits with the Federal Government these payments and the appropriate amounts with respect to its own employees.

Private employers are required to make payroll tax payments under a schedule that links the frequency of deposits to the amount of taxes withheld. Large employers may make deposits as frequently as eight times a month, while small employers may make them as infrequently as once every 3 months. (These rules also apply to deposits of Federal income taxes withheld by State and local governments from their employees.)

Late deposits by State governments are subject to an interest charge at the rate of 6 percent per year. Private sector employers pay an interest rate that is based on the prime interest rate charged by major commercial banks. This rate is adjusted semi-annually.

Explanation of provision.—The Committee bill removes from the States the intermediary role of collecting social security contributions from sub-State entities and place all State and local government employers under a direct depositing requirement with a schedule that conforms with the frequency required of private employers. State are relieved of liability for collecting and verifying the social security contributions owed by its political subdivisions. In addition, the provision subjects State and local governments to the same interest charge and penalties for late deposits as are imposed on private employers.

Effective date.—The provision is effective for payments of contributions due with respect to wages paid after December 31, 1986.

Subtitle B.—Public Assistance and Unemployment Compensation Provisions

1. *AFDC for Unemployed Two-Parent Families (sec. 10101 of the bill)*

Present law.—States have the option to provide AFDC to financially eligible two-parent families in which the principal earner is "unemployed," defined as working fewer than 100 hours per month.

For eligibility, the law requires that the unemployed parent have worked 6 or more quarters in any 13-calendar quarter period ending within 1 year before applying for AFDC-UP.

States without an AFDC-UP programs are: Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming. The Virgin Islands and Puerto Rico also do not have AFDC-UP.

Explanation of provision.—The bill requires all State AFDC programs to offer assistance to financially eligible two-parent families in which the principal earner is "unemployed," defined as working fewer than 100 hours per month.

In addition, the definition of "quarters of work" would be modified. States would be permitted to substitute for 4 of the requisite 6 quarters of work, quarters of full-time attendance in elementary or secondary school or full-time participation in vocational training, with a lifetime limit of 4 quarters creditable to vocational training.

Effective date.—The proposal would be effective January 1, 1988.

2. Targeting the Use of the Income and Eligibility Verification System (sec. 10102 of the bill)

Present law.—Section 1137 of the Social Security Act requires that States establish an income and eligibility verification system (IEVS) for certain public assistance programs. Section 1137 was established by the Deficit Reduciton Act of 1984 and was effective April 1, 1985, although the Secretaries of the respective departments may permit States to delay implementation. Such delays may not extend beyond September 30, 1986.

Under IEVS, the State agencies administering AFDC, Medicaid, Unemployment Compensation, Food Stamps and the adult assistance programs in the territories (and the Social Security Administration (SSA) in the case of the SSI program) must request and make use of: (1) unearned income information available from the Internal Revenue Service; and (2) quarterly wage information. Independent verification of the unearned income information is required before action can be taken and recipient confidentiality must be protected.

Explanation of provision.—The bill clarifies that Congress intends that the system be targeted to those uses which are likely to be most productive.

It is the intent of the Committee to have States utilize a variety of information sources to verify the eligibility of applicants and recipients of benefit programs, as an effective and efficient tool in preventing benefit payments from being made to individuals who are not eligible. For the use of such information to be a productive activity, States must be afforded the discretion to target their efforts in ways they determine most cost effective. The final rules promulgated by the respective Departments do not permit the targeting prescribed in statute. Rather, the final rules call for matching all applicants and recipients against each information source, and require a follow-up in all cases where any income, earned or unearned, is indicated. This universal review was not what was intended by Congress and would result in an unnecessary and costly administrative burden on the States.

To insure that the required matches are cost-effective verification processes, the States should be allowed to prioritize and target the follow-up of case records based on match findings. For example, following-up on individuals whose unearned income exceeds certain tolerance levels is more efficient than verifying every case with unearned income.

In addition, the Committee believes that requiring States to act upon the information they receive within 30 days, as prescribed in the final rule, is unrealistic. States have a finite amount of administrative resources, and are dependent upon the actions of others outside the agency as well as the mail system to carry out their duties. For this reason, the Committee believes a 45 days requirement is more reasonable than the 30 days set forth in the final rule. The allowance that action can be delayed further on up to 20 percent of the information items when collateral verification sources are required—as provided in the final rules—should be retained.

Effective date.—On enactment.

3. Annual Calculation of the Federal Percentage of AFDC Expenditures (sec. 10103 of the bill)

Present law.—Prior to enactment of Public Law 99-272, the Federal percentage was calculated between October 1 and November 1 of each even-numbered year. The percentage applied to the two year period beginning the following October. P.L. 99-272 requires an annual rather than biennial calculation of the Federal percentage beginning in FY 1987.

Explanation of provision.—The shift from a biennial to an annual calculation of the Federal percentage occurs in the middle of the two-year cycle and results in a loss of funds for 13 States in FY 1987. The bill restores these funds for FY 1987 only. According to the Department of Health and Human Services the States affected are: Arizona, Florida, Georgia, Maine, Minnesota, Missouri, New Hampshire, North Carolina, Ohio, Rhode Island, South Carolina, South Dakota, and Virginia.

Effective date.—October 1, 1986.

4. Extension of that Portion of the Federal Unemployment Tax (FUTA) that is Due to Expire on December 31, 1987 (sec. 10104 of the bill)

Present law.—Employers pay a FUTA tax of 6.2% on the first $7,000 in wages paid to their employees. They receive a credit, however, of 5.4% in recognition of the State unemployment taxes that they pay, making the net FUTA tax .8%. A portion of the 6.2% gross FUTA rate, .2%, is temporary and under current economic assumptions will expire on December 31, 1987. This will reduce the net FUTA tax to .6%.

The temporary portion of the FUTA tax was enacted as part of the Unemployment Compensation Amendments of 1976 (P.L. 94-566) and became effective on Janaury 1, 1977. The funds generated by this portion of the tax are used to repay general revenue advances made to the Extended Unemployment Compensation Account. These advances have been used to pay for the Federal Supplemental Benefit program and for the Federal share of the permanent extended benefit program.

Under current law, the tax automatically expires at the beginning of the first year following the year in which the advances are repaid. Current economic projections indicate that advances will be fully repaid in mid-1987. This means that the gross FUTA tax rate will be 6.0% and the net FUTA tax rate will be .6%, for the year beginning January 1, 1986.

Explanation of provision.—The bill provides that the temporary FUTA tax would remain in effect for 1988 and 1989, notwithstanding the anticipated repayment in 1987 of general revenue advances to the Extended Unemployment Compensation Account.

Effective date.—The provision applies to renumeration paid after December 31, 1986.

Subtitle C.—Medicare and Health Programs

Part 1—Provisions Relating to Medicare Part A Only

1. Setting part A deductible at $500 for 1987 (sec. 10201 of the bill)

Present law.—Under current law medicare beneficiaries are required to pay a part A hospital deductible for each hospital admission, but not to exceed one hospital deductible per spell of illness. The part A deductible is tied to a formula based on the annual increase in the average cost per day of hospitalization. The deductible for CY 86 is $492 and is projected to rise to $572 in 1987, $616 in 1988, and $648 in 1989. The part A deductible has increased rapidly as an unforeseen consequence of the shorter lengths of stay that have resulted in part from the implementation of the prospective payment system for hospitals.

Explanation of provisions.—For CY 86 the hospital deductible would be $500, thereafter current law would prevail. The Committee believes that the projected increases in the hospital deductible are unacceptably high and will reach levels which were never intended. If the current rate of increase had been allowed, the part A deductible would have gone up 43% over the two years, 1986–1987. For this reason, the Committee has decided to set the deductible at $500 for CY 86 with the thought that it will revisit this issue next year to determine an appropriate rate structure for future years.

Effective date.—The provision is effective for part A hospital deductibles incurred in 1987.

2. Applicable percentage increase in payments for inpatient hospital services (sec. 10202 of the bill)

Present law.—Current law provides that the medicare prospective payment rates be updated annually by the Secretary of Health and Human Services (HHS). The law states that the update should reflect increases in hospital input prices, but not to exceed the hospital market basket (index measuring hospital input prices) for FY 1987 and FY 1988 and market basket plus one quarter of a percentage point thereafter. The Congressional Budget Office baseline for estimating FY 1987 expenditures assumes a 2% increase in payments for PPS hospitals.

On June 30, 1986, the Secretary of HHS promulgated proposed regulations that would provide a .5% increase in the prospective payment rates for FY 1987. The Prospective Payment Assessment Commission (ProPAC) has recommended a 2.2% increase in prospective payment rates for FY 1987 if capital is included into the PPS system, 1.9% if not.

PPS-exempt hospitals are paid on a cost basis subject to caps on the maximum amount of allowable reimbursement. The Secretary of HHS has proposed a .5% increase in the caps of PPS-exempt hospitals while ProPAC has recommended a 3.2% increase.

Current law requires that the DRG weights by recalibrated no less frequently than every four years. Recalibration means the adjustment of all DRG weights to reflect relative resource use associated with all existing DRG categories and/or the creation or elimination of DRG categories.

Explanation of provision.—The bill would require that prospective payment system hospitals be provided a 1.3% increase in the average standardized payment amounts for fiscal 1987 and market basket minus two percentage points for fiscal 1988.

PPS-exempt hospitals would be provided a 1.3% increase in the cost limits for FY 1987, and an increase for hospital market baskets minus 2.0% for FY 1988. In years beyond FY 1988 the bill would indicate that the update factor for PPS hospitals may be established at a different level than the update factor for PPS exempt hospitals. It is the Committee's view that the criteria utilized to develop the update factor for PPS-exempt hospitals should be specific to the operation of these facilities. Therefore, the Committee recommends that the Secretary consider the ProPAC recommendations regarding a separate update factor for PPS-exempt hosptials.

The Committee has given, in the past, a significant amount of discretion to the Secretary of Health and Human Services in developing the annual update factor for hospital payments under the medicare program. The statutory language requires that hospital payments reflect amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality.

The Committee has, however, for the last two years overridden the Administration's recommended update factor. The Committee finds itself in the same situation once again this year as it finds the Secretary's recommended FY 1987 update factor unacceptable. The Committee concludes that the Administration, in developing the update factor for fiscal year 1987 used factors other than those originally anticipated in the legislation.

In response to concerns of the Secretarial use of the discretionary authority granted by Congress, the Committee has reluctantly taken the step of not only mandating the update factor for FY 1987 but also for FY 1988. The Committee requires that the Secretary, for the FY 1988 update factor, provide a report and a documented recommendation to Congress by April 1, 1987, on what the Secretary would recommend for the FY 1988 update factor. The Committee will review this report, along with the report of the Prospective Payment Assessment Commission, and make a determination as to what, if any, adjustments should be made to the FY 1988 update factor established under this legislation at market basket minus two percent.

The Committee anticipates that the Secretary will continue to publish the June 1 proposed regulation for FY 1988, providing for the market basket minus two percent update factor as well as recalibrating and making other adjustments as appropriate and within the scope of the law. The final regulation would be published September 1, 1987, for implementation October 1, 1987.

The Committee believes that the most recent data available should be used in refining the market basket. The market basket is being established on a 1982 data source even though significant changes have taken place since then. Data from 1984 is available and should be used.

The Secretary of HHS would be required to recalibrate the diagnosis related group (DRG) weights annually to ensure that the DRG weights reflect the use of new technologies and other practice pattern changes affecting the relative use of hospital resources among DRG categories.

The Committee is most concerned that the Administration has failed to respond to Congress on the many studies and requests that would identify ways in which the PPS system could be refined to more accurately reflect the costs incurred per discharge. As the movement towards national rates progresses, the need for refinements to the system in order to provide for an equitable distribution of payments among hospitals becomes more urgent. The Committee understands that the Secretary of Health and Human Services has made the PPS studies and refinement issues the highest priority. The Committee further anticipates that work on refining the PPS system will enable consideration of legislation to make the system more equitable during 1987.

The Committee is concerned about the impact of the prospective payment system on rural hospitals. The Committee is also concerned about hospitals in rural areas which are on the margins of qualifying for the urban payment rate. The Committee believes that hospitals in counties that are in this category may be experiencing hardship under the PPS system and would urge that the Secretary examine what options are available to remedy this situation. Furthermore, the Committee is concerned about the impact of the outlier policy on rural hospitals as well as the accuracy of the methodology of establishing the rural/urban payment rates. The Committee will be examining more closely the issue of rural hospitals in the coming year.

Effective date.—The provisions would be effective for cost reporting periods beginning during fiscal years 1987 and 1988 for prospective payment system-exempt hospitals; and for discharges occurring during fiscal years 1987 and 1988 for prospective payment system hospitals.

3. Limitation on payments for capital-related costs for inpatient hospital services of DRG hospitals under medicare (Sec. 10203 of the bill)

Present law.—The Social Security Amendments of 1983, P.L. 98-21, implemented a prospective payment system for hospital inpatient operating costs. Under P.L. 98-21, capital-related costs are excluded from the prospective payment system until October 1, 1986. This exclusion was extended until October 1, 1987, by the Urgent Supplemental Appropriations Bill, P.L. 99-369.

If Congress does not enact legislation to include capital-related costs in the prospective payment system by October 1, 1987, medicare payment for such new costs would only be allowed if a State has a capital-expenditure review agreement with the Secretary of HHS (under section 1122 of the Social Security Act) and the State had recommended approval of the expenditure.

The Consolidated Omnibus Budget Reconciliation Act of 1985, P.L. 99-272, provides that payment for return on equity capital will be separated from payments from other elements of capital-related costs and phased out over a three year period. For hospital cost reporting periods beginning in fiscal year 1987, payments for return on equity will be reduced to 75% of the otherwise allowable amount. For cost reporting periods during fiscal years 1988 and 1989, return on equity payments will be reduced to 50% and 25% respectively, of the otherwise allowable amounts.

Explanation of provision.—The bill would require the Secretary to ensure that the aggregate payment amount for capital-related costs associated with inpatient hospital services for hospitals under the prospective payment system (PPS) does not exceed the target limits as specified.

The Secretary of HHS would be required to estimate, based upon the best available data, the aggregate amount of payment for capital-related costs associated with inpatient hospital services for PPS hospitals and their exempt units for portions of cost reporting periods occurring in fiscal year 1986. The aggregate amount means the sum of such capital-related expenditures for hospitals under the prospective payment system.

This amount would establish the base on which payments in fiscal years 1987 through 1989 would be determined. The Secretary would be permitted to adjust the fiscal year 1986 base in each of the following fiscal years based on the most recent available data.

In determining the limit on payments in fiscal year 1987, the Secretary would be required to adjust the fiscal year 1986 base. The base would be reduced by an amount equal to 25 percent of the payment for return on equity. The Secretary would be required to ensure that the aggregate amount of such capital-related payments for portions of cost reporting periods occurring in fiscal year 1987 does not exceed 110% of the adjusted fiscal year 1986 base.

The fiscal year 1986 base used for determining the limit on payments in fiscal year 1988 would be reduced by the amount equal to 50% of the payment amount for return on equity. The Secretary would be required to ensure that the aggregate amount of such capital payments for portions of cost reporting periods occurring in fiscal year 1988 does not exceed 120% of the adjusted fiscal year 1986 base.

The fiscal year 1986 base used for determining the limit on payments in fiscal year 1989 would be reduced by an amount equal to 75% of the payment amount for return on equity. The Secretary would be required to ensure that the aggregate amount of such capital expenditures for portions of cost reporting periods in fiscal year 1989 does not exceed 130% of the adjusted fiscal year 1986 base.

If the Secretary determines that the aggregate amount of payment for capital-related costs would exceed the specified limits, the Secretary would be required to determine the necessary capital reduction percentage to ensure that payments do not exceed the specified limits. The Secretary would then reduce payments by the percentage necessary to provide that payments for portions of cost reporting periods in such fiscal years are within the specified limits. The Secretary would be required to determine such percentage based upon the best available data prior to the beginning of the fiscal year involved.

The percentage reduction determined by the Secretary to be necessary to ensure that payments do not exceed the target limits would not be subject to further adjustment in later fiscal years. There would be no judicial review of the percentage reduction factor. Final reconciliation of payments to hospitals would be made on the basis of such percentage.

The current law exclusion of capital-related costs from the prospective payment system until October 1, 1987, would not be changed.

The Secretary would be required to publish in the Federal Register the capital percentage reduction for each fiscal year as a part of the prospective payment regulations proposed in June. For fiscal year 1987, the Secretary would be required to publish the percentage reduction within 30 days after enactment, but no later than October 1, 1986.

The Prospective Payment Assessment Commission would be required to assess the assumptions used by the Secretary in determining the capital reduction percentage and report to Congress.

This provision would not apply to PPS-exempt hospitals or sole community providers.

For purposes of this provision, capital-related costs include those costs as prescribed by the Secretary in regulation. Return-on-equity would be phased out over three years as under present law.

Effective Date.—Enactment

4. Coverage of hospitals in Puerto Rico under DRG Prospective Payment System (sec. 10204 of the bill)

Present law.—Under current law, hospitals located in Puerto Rico are excluded from the prospective payment system and continue to be reimbursed on the basis of reasonable costs.

The Secretary of HHS was required to submit legislative recommendations to Congress with respect to methods for including hospitals located outside of the 50 States (including Puerto Rico) under a prospective payment system. The report was due April 1, 1984, and has not yet been received.

Explanation of provision.—The bill would require the Secretary to include hospitals located in Puerto Rico into a prospective payment system. The prospective payment rate for such hospitals would be equal to 75 percent of the Puerto Rico standardized rate and 25 percent of the national standardized rate.

The national standardized amount for Puerto Rican hospitals would be an equal blend of the rural and urban standardized amounts.

The Secretary would be required to determine a Puerto Rico standardized amount for urban and rural hospitals. The amount would be standardized by excluding an estimate of indirect medical education costs, adjusting for variations among hospitals by area wage levels and adjusting for variations in case mix among hospitals.

An area wage adjustment would be provided to hospitals located in Puerto Rico. Such adjustment would be based on the relative hospital wage level in the hospital's geographic area compared to the Puerto Rican average hospital wage level.

The Secretary would be required to estimate what additional payments will be made under the disproportionate share and outlier provisions and reduce the Puerto Rico average standardized amount to account for such payments.

The Secretary would be prohibited from restandardizing or otherwise adjusting the national standardized rate to reflect the inclusion of Puerto Rico into the prospective payment system.

The following provisions relating to hospitals under the prospective payment system generally, would also apply to hospitals located in Puerto Rico; outlier payments, payments for indirect medical education, payments relating to the cost of certified registered nurse anesthetists, payments relating to disproportionate share and other exceptions and adjustments as determined by the Secretary.

The current law provision under the prospective payment system relating to sole community providers or referral centers would not apply to hospitals located in Puerto Rico.

The Secretary would determine the Puerto Rico standardized rate for fiscal year 1987 by updating the target amount for fiscal year 1986 by the appropriate PPS update factor.

The Secretary would be required to issue regulations, no later than October 1, 1986 as are necessary to implement this provision.

The PPS update factor for hospitals located in Puerto Rico would be the same update factor as for other prospective payment hospitals beginning in fiscal year 1988.

Effective Date.—The provision would be effective with respect to cost reporting periods beginning on or after October 1, 1986.

5. *Improving Quality of Care with Respect to Part A Services (sec. 10205 of the bill)*

Present Law.—(a) Refinement of the Prospective Payment System—Under the medicare prospective payment system, hospitals are reimbursed on a per case (diagnosis related group—DRG) basis. Payment rates for each DRG reflect the average cost of providing care to patients classified in the DRG.

(b) Requiring Notice of Patient Rights—There is no statutory requirement that a statement of rights be distributed.

(c) Discharge Planning—By regulation, hospitals participating in medicare must have a discharge planning program to facilitate the provision of followup care.

(d) Review of Conditions of Participation—For a hospital to be eligible for medicare reimbursement, the hospital must be in compliance with medicare's conditions of participation for hospitals as set forth in subchapter B of title 42 the Code of Federal Regulations or must be accredited by a national accreditation body, such as the Joint Commission on Accreditation of Hospitals.

(e) Study of Payment of Administratively Necessary Days—Under prospective payment, payment for hospitals is made on a per case basis. No special provision is made for payment of administratively necessary days (ANDs). An AND is a day of continued inpatient hospital stay necessitated by delays in obtaining placement of a patient in a skilled nursing facility (SNF).

(f) Continuation of Favorable Presumption of Waiver of Liability—Under the waiver of liability, payment may be made for services which are not covered because they were not medically necessary or were for custodial care if neither the beneficiary nor the provider knew or could reasonably have been expected to know that the services were not covered for these reasons. By regulation, a home health agency is presumed to meet this test if its denial rate on claims for services is 2.5 percent or less. A SNF is presumed to meet the test if its denial rate is 5.0 percent or less. Hospice providers are not eligible for a favorable presumption.

In a notice dated February 21, 1986, the Secretary issued regulations that eliminated the favorable presumption of the waiver of liability. Payment for noncovered services would have continued on a case-by-case basis. Implementation of the regulation was temporarily blocked by P.L. 99-272. As a result of the law, the favorable presumption will be continued until October 1, 1988, for SNF services. The favorable presumption for home health services will be continued until 12 months after the date on which ten regional intermediaries commence operation as required under Section 1816(e)(4) of the Social Security Act.

(g) Waiver of Liability for Technical Denials for Home Health Services—Beneficiaries who are confined to home and require skilled nursing care on an intermittent basis are eligible for home health services. Intermittent care generally is defined as permitting daily skilled nursing visits of up to eight hours a day for up to two to three weeks. Denials based on homebound and intermittent care requirements are commonly referred to as "technical denials." Under the waiver of liability, payment may be made for services excluded from coverage under Section 1862(a)(1) or (9) of the Social Security Act as unnecessary or as related to custodial care if the provider did not know and could not be expected to have known that payment would be denied for these reasons. The waiver of liability does not apply to technical denials.

(h) Development of Uniform Needs Assessment—Current law contains no provision.

(i) Expedited Review by Fiscal Intermediaries—Claims for hospice, home health, and SNF services generally are reviewed on a retrospective basis after the services are provided. Current law does not provide effective standards for timeliness in claims submission and review.

(j) Including Information in PPS Annual Reports—The Secretary is required to submit annual reports to Congress concerning the prospective payment system.

(k) Prior Authorization Demonstration Project—Medicare fiscal intermediaries have responsibility for deciding whether payment will be made for services provided by home health agencies and SNFs. Generally, these payment decisions are made on a retrospective basis after services are provided.

Explanation of Provision.—(a) Refinement of the Prospective Payment System—A number of studies have shown that, because of technical limitations with the DRGs, costs are substantially higher than the DRG payment for some patients. In other cases, costs are substantially less. As a result of these limitations, hospitals which provide care to a more severely ill patient population may receive insufficient reimbursement. Even if total payments to a hospital during a year approximate costs of providing necessary care, hospitals may have incentives to inappropriately reduce services in an attempt to increase net revenues if payments and costs diverge substantially in individual cases. For these reasons, the Committee believes that there is a need to improve the case mix measurement system used in determining prospective payments for hospitals.

The Secretary would be required to submit a legislative proposal to improve the prospective payment system. The proposal should assure that per case payments approximate the cost of providing medically necessary care in an efficient manner for individual patients or classes of patients with similar conditions. The proposal should account for variations in severity of illness and case complexity which are not adequately accounted for by the DRGs; however, use of a severity of illness index is not specifically required. The report is due no later than 2 years after enactment.

(b) Requiring Notice of Patient Rights—The medicare provider agreement with hospitals would be amended to require that hospitals provide a notice of patient rights to beneficiaries at the time of hospital admission. The notice would include information concerning: (i) rights to inpatient and post-hospital care under medicare; (ii) financial liability for continued inpatient stay if a hospital serves notice that further inpatient care is no longer necessary; (iii) rights to appeal such a notice; (iv) financial liability for continued stay if the appeal is unsuccessful; and (v) other such information as the Secretary of Health and Human Services deems appropriate. It is the Committee's intent that the statement of rights be written in terms easily understood by the elderly. The Committee also intends that the statement of rights be provided in translation to non-English speaking beneficiaries.

(c) Discharge Planning—The Committee believes that sound discharge planning is essential to ensuring a safe transition after discharge from an acute care setting. The need for effective discharge planning has increased because the average length of hospital stay for beneficiaries has shortened significantly partly as a result of the prospective payment system and other changes in the health care system. Accordingly, the Committee has adopted a provision that would establish a set of minimum standards for discharge planning that must be satisfied for a hospital to participate in medicare.

Under the provision, hospitals would be required to provide a discharge planning evaluation for beneficiaries who are hospital inpatients: (i) upon request of the patient or attending physician; and (ii) for other patients likely to suffer adverse health consequences after discharge in the absence of discharge planning. The required evaluation would include an assessment of the patient's need for post-hospital services and the availability of those services. The conclusions of the discharge planning evaluation would be made available to the patient and the attending physician to assist in the development of a final discharge plan. Discharge planning would be performed by, or under the supervision of, a registered nurse, social worker, or other appropriately qualified personnel. The requirements could not be satisfied by accreditation by a national accreditation body acting pursuant to Section 1865(b) of the Social Security Act unless the Secretary determines the discharge planning requirements of the accreditation body are at least as rigorous as those required by this provision.

(d) Review of Conditions of Participation—The Secretary would be required to arrange for a study of the standards used to qualify hospitals for participation in medicare. The purpose of the study would be to determine whether the standards are adequate to ensure quality of care. Enactment of the prospective payment system in 1983 has changed financial incentives for hospitals in a fundamental way. While the overall effect of the new incentives has been positive, there exists a possibility that hospitals might inappropriately reduce essential services to increase net revenues. The Committee believes that rigorous and detailed quality assurance standards are essential to safeguard against this possibility. Accordingly, the Committee believes that a review of the standards used to qualify hospitals for participation in medicare is appropriate at this time.

The Committee recognizes that the Secretary recently completed a review of medicare's conditions of participation for hospitals and issued final regulations changing these conditions in June of this year. This review was initiated by the Secretary in 1980 before enactment of the prospective payment system, and the purpose of the review was to simplify the conditions of participation to provide maximum flexibility for providers. Because the review was not focused on the possible need to strengthen quality assurance mechanisms to serve as a counterbalance to the incentives inherent in prospective payment, the Committee believes that the recently completed review is not sufficient to satisfy the Committee's concerns.

The Committee intends that the study encompass both medicare's conditions of participation for hospitals as set forth at 42 C.F.R. subchapter B and the standards used by national accreditation bodies recognized by the Secretary, such as the Joint Commission on Accreditation (JCAH) and the American Osteopathic Association (AOA). The Committee notes that about 5,000 hospitals are qualified to participate in medicare by virtue of accreditation by the JCAH or AOA. These hospitals are not directly subject to the conditions of participation that appear in regulation. Only about 1,000 hospitals are directly subject to the regulatory conditions of participation. Thus, there is a clear need to review both the regulatory standards and standards established by national accreditation bodies. It is the Committee's intent that the Secretary consult with a wide variety of experts in quality assurance and with representatives of providers, physicians, and consumers in conducting the study. The study would be due within 2 years after enactment.

(e) Study of Payment of Administratively Necessary Days—Under the prospective payment system, hospitals receive a fixed per case payment irrespective of actual length of stay. A hospital which is unable to discharge a beneficiary because of difficulties in obtaining placement for the beneficiary in a SNF may be reimbursed less than costs if substantial delays in discharge result. Although payment for these administratively necessary days has been included in the prospective payment system rates, these payments may be insufficient in some situations. Accordingly, it has been suggested that a separate payment be made for administratively necessary days (ANDs), that is, for additional days of inpatient hospital care necessitated by delays in obtaining SNF placement. Because of the complexity of the issues involved in implementing an AND payment system, the Committee believes that the advisability of making payments for ANDs should be carefully studied.

Under the provision adopted by the Committee, the Secretary would be required to conduct a study to determine whether payment should be made for ANDs. Such a payment would be separate from the per discharge and outlier payments made under prospective payment. The Secretary would be required to consider whether payment for ANDs is needed to minimize the potential for a disproportionate financial impact of prospective payment on hospitals located in areas where there is a shortage of nursing home beds. The Secretary would also be required to consider the potential for inappropriate payments for ANDs and the practicality and effectiveness of administrative mechanisms that could be used to prevent inappropriate payments. The report would be due by January 1, 1988.

(f) Continuation of Favorable Presumption of the Waiver of Liability—The Committee believes that it is appropriate to extend certain rules related to the waiver of liability for home health and SNF services by an additional year, to October 1, 1989. During the interval, the Secretary would be required to conduct a demonstration of a prior authorization system for home health and SNF services. After completion of the demonstration project, the Committee believes that it may be appropriate to consider either a further extension of current policy concerning the waiver or replacement of the waiver (in whole or in part) by a prior authorization system.

Under the proposal, a favorable presumption regarding the waiver of liability would be available to qualified hospice, home health, and SNF providers until October 1, 1989. Hospice providers having 2.5% or fewer claims denied on the basis of Section 1862(a) (1) or (9) of the Social Security Act would qualify. Current standards for home health and SNF providers would continue to apply.

(g) Waiver of Liability for Technical Denials for Home Health Services—The Committee notes that there is a considerable degree of uncertainty concerning standards for application of the homebound and intermittent care requirements for home health services. As a result of this uncertainty, a home health agency, acting in good faith and believing that the beneficiary satisfies the applicable standards, may provide costly services to a beneficiary only to find that payment has been denied after the fact.

To protect providers acting in good faith and to improve access to needed home health services, the Committee would extend the waiver of liability to allow for payment of home health services if the provider did not know and could not have been expected to know that payment would be denied based on a determination that the individuals was not homebound or did not require skilled nursing care on an intermittent basis. A home health agency would be presumed to be without knowledge regarding these facts if no more than 2.5 percent of the claims submitted by the agency during the previous quarter were denied on the basis of homebound or intermittent care requirements. The favorable presumption provision would expire on October 1, 1989.

(h) Development of Uniform Needs Assessment Instrument—The Secretary of Health and Human Services would be required to develop a uniform needs assessment instrument to be used by discharge planners, providers, and fiscal intermediaries in evaluating an individual's need for hospice, home health, and skilled nursing facility (SNF) services, and other long-term care services of health-related or supportive nature. An advisory panel would be established for consultation with the Secretary. The Secretary would be required to submit a report to Congress concerning the needs assessment instrument no later than 1 year after enactment. The report would include an evaluation of the instrument and the advantages and disadvantages of using the instrument for determining whether payment should be made for hospice, home health, and SNF services provided to beneficiaries.

(i) Expedited Review by Fiscal Intermediaries—Reimbursement determinations for hospice, home health, SNF services are made by fiscal intermediaries on a retrospective basis after services have been provided. Because these services generally are provided on an ongoing basis, delays in claims processing can lead to substantial financial burdens for providers if payment is denied. Current law does not establish effective standards for timeliness of claims review. In some situations, there can be a delay of up to 3 months or more between initial provision of services and first notification of the provider by the fiscal intermediary concerning coverage and reimbursement.

The Committee believes that this delay creates an unacceptable burden on hospice, home health, and SNF providers. Accordingly, under the provision adopted by the Committee, the Secretary would be required to develop procedures to expedite the claims review process for hospice, home health, and SNF services to minimize the delay between initiation of services and first notice from the intermediary to the provider as to whether payment will be made.

(j) Including Information in PPS Annual Reports—The annual reports to Congress would be expanded to include: (i) an evaluation of the adequacy of procedures for assuring the quality of post-hospital services provided under medicare; (ii) an assessment of problems that have prevented beneficiaries from receiving appropriate post-hospital services; and (iii) information concerning reconsiderations and appeals for post-hospital services covered under medicare.

(k) Prior Authorization Demonstration Project—The Secretary would be required to conduct a series of demonstration projects related to prior authorization of home health and SNF services. The purpose of the demonstration would be to demonstrate the feasibility of a prior authorization system and to evaluate prior authorization as an alternative to the current system of retrospective review.

Effective Date.—Paragraphs (a), (d), (e), (h), (j), and (k) would be effective on enactment. Paragraph (b) would be effective no later than eight months after enactment. Paragraph (c) would apply to hospital provider agreements no later than 1 year after enactment. Paragraphs (f) and (g) have varying effective dates. Paragraph (i) would be effective one year after enactment.

6. Off-budget treatment of federal hospital insurance trust fund in fiscal year 1987 (sec. 10206 of the bill)

Present Law.—Under current law the Federal Hospital Insurance Trust Fund (HI) receipts and disbursements are included in the unified budget until fiscal year 1993. In 1993 the HI Trust Fund will be removed from the unified budget. Under the Balanced Budget and Emergency Deficit Control Act of 1985, the Old-Age and Survivors and Disability Insurance Trust Funds (OASDI) were removed from the unified budget for fiscal year 1986 and beyond. However, the disbursements and expenditures of these two trust funds are included for purposes of determining whether the deficit exceeds the "maximum deficit amount" targets set in law.

Explanation of provision.—The Committee is concerned that as a result of the Balanced Budget and Emergency Deficit Control Act of 1985 the Hospital Insurance Trust Fund is treated differently for budget purposes than the Old-Age and Survivors and Disability Insurance Trust Fund. To preserve the historic relationship of the three trust funds for budget purposes, the bill would accelerate from fiscal year 1993 to fiscal year 1987 the effective date of the provision of the Social Security Act that removes the receipts and disbursements of the Federal Hospital Insurance Trust Fund (HI) from the unified budget presented by the President and considered by the Congress. The Committee bill would provide for the HI and OASDI trust funds to be treated the same under the Balanced Budget and Emergency Deficit Control Act of 1985. The disbursements and expenditures of all three trust funds would be included for purposes of determining whether the deficit exceeds the "maximum deficit amount" targets set in law.

Effective date.—The provision is effective beginning October 1, 1986.

7. Technical amendments and miscellaneous provisions relating to part A (Sec. 10207 of the bill)

Present Law.—(a) One year extension of pass-through for costs of certified registered nurse anesthetists—Under current law the costs of certified registered nurse anesthetists are passed through on a cost basis for PPS hospitals until October 1, 1987.

(b) Four-year designation period for rural referral centers—Under current law a rural hospital will be considered a rural referral center if it has at least 500 beds and meets other requirements. Under regulations, once a rural referral center has achieved referral status, it will be paid at the applicable urban rate for a three year period.

(c) Temporary waiver of inpatient limitations for Connecticut Hospice, Inc.—Current law requires that medicare-certified hospices maintain no more than 20% of total days as inpatient days. Connecticut Hospice, Inc. currently has waivers of virtually all the medicare requirements but the waivers expire on October 1, 1986.

(d) Massachusetts medicare repayment—Massachusetts operated a State-wide hospital demonstration project from October 1, 1982 through June 30, 1986. The effectiveness of the state system is judged by the Secretary to ensure that medicare expenditures under the demonstration are not greater than they would have been under medicare regular reimbursement rules. The Secretary of HHS has determined, based upon unaudited data, that medicare overpayments were made during the first two years of the Massachusetts waiver. As a result the Secretary has established a repayment schedule for the "overpayments".

(e) Technical and other miscellaneous provisions—Current law contains a number of technical errors.

Explanation of Provision.—(a) One-year extension of pass-through for costs of certified registered nurse anesthetists--The bill would extend by one year the pass-through for costs of certified registered nurse anesthetists.

(b) Four-year designation period for rural referral centers—Hospitals currently with rural referral status under the PPS system would receive payment at the urban rate for a four year period rather than for a three year period. After the fourth year, each such hospital would be required to demonstrate that it continues to meet the criteria established by the Secretary. The Secretary would be prevented from terminating such classification before the end of the hospital's fourth cost reporting period.

(c) Temporary waiver of inpatient limitations for the Connecticut Hospice, Inc.—Connecticut Hospice, Inc. would receive a waiver of the inpatient day requirement for a two year period provided that the proportion of inpatient days does not exceed 50%. The waiver would not be extended beyond this period.

(d) Massachusetts Medicare Repayment—The bill would prevent the Secretary from further recouping or otherwise reducing payments for these hospitals until January 1, 1988. The bill would not change any payment amounts that may become due.

(e) Technical and other miscellaneous amendments—(1) Correct and clarify section regarding payments under the indirect teaching adjustment;

(2) Correct and clarify section regarding payments under the disproportionate share provision;

(3) Clarify that all hospitals which have a medicare provider agreement would have to abide by the emergency care requirements;

(4) Allow SNFs to make election to be paid on a prospective payment basis based on their cost reporting periods rather than on a Federal fiscal year basis;

(5) Clarify that the Medicare (HI) tax on state and local government does not apply to certain campaign workers; and

(6) Make other miscellaneous corrections to COBRA and related laws.

Effective Date.—

(a) October 1, 1987

(b) Enactment

(c) Enactment

(d) Enactment

(e) The provisions would be effective as if they had been included in the enactment of the laws they amend.

Part 2—Provisions Relating to Parts A and B

1. Elimination of periodic interim payment system (PIP) for DRG hospitals and prompt payment for medicare providers (sec 10221 of the bill)

Present law.—(a) Periodic interim payment system—There are no current law requirements concerning periodic interim payments to providers. By regulation, the Health Care Financing Administration (HCFA) allows providers (hospitals, skilled nursing facilities, home health agencies and hospices) that elect such payments and which meet specified guidelines, the option of receiving periodic interim payments (PIP) every two weeks. The payments are based on an estimate of how much the medicare program owes the provider. Overpayments/underpayments are settled quarterly. HCFA has proposed eliminating PIP as an option for all hospitals, skilled nursing facilities, hospices and home health agencies effective July 1, 1987.

(b) Prompt payment for medicare providers—There are no current law requirements concerning prompt payment of claims. Historically, medicare has processed both part A and part B claims in a timely manner. HCFA has recently slowed down the average processing time for part A claims from an average of 9 days in the beginning of FY 1985 to an anticipated 27 days at the end of FY 1986; and for part B claims from 11 days in the beginning of FY 1985 to an anticipated 27 days at the end of FY 1986.

Explanation of provision.—(a) Periodic interim payment system—The periodic interim payment option would be eliminated for inpatient hospital services provided in PPS hospitals and exempt units of PPS hospitals, except for services provided in "disproportionate share" hospitals, sole community hospitals, and hospitals in States holding waivers under Section 1886(c) or Section 1814(b)(3). Cost-based providers could continue to receive PIP payments, at their election as under current regulations.

The Committee understands that the Administration believes that regular periodic interim payments to providers are inconsistent with the prospective payment system. While reimbursement on a cost-basis requires that approximations of medicare payments be calculated pending the completion of each cost-accounting year, the prospective payment system is not dependent on this reporting method.

However, because the Committee recognizes that elimination of periodic interim payments may present serious financial difficulties for certain hospitals, the Secretary would be required to permit payment on a periodic interim basis to hospitals to which the above exception applies, using a mechanism that is comparable to that which is currently in place under 42 CFR 405.454(j). In addition, the Secretary would be required to make available accelerated payments to hospitals if the hospital can demonstrate that it is experiencing significant cash flow difficulties resulting from the operations of the fiscal intermediary or unusual circumstances of the hospital operations.

(b) Prompt payment for medicare providers—Prompt payment of medicare claims would be required. "Clean" claims (i.e., claims which are free of any defect or impropriety, including the lack of any required substantiating documentation, such as incomplete or erroneous entries, and do not require special treatment, such as medical review, preventing timely payment) submitted for payment of services covered under medicare part A would be required to be paid within 22 calendar days of receipt by the medicare intermediary. If the claim is not "clean" and for that reason cannot be paid within the required time period, a notice would have to be sent to the provider who submitted the claim to inform them of expected delays.

"Clean" claims (meeting the definition described in the preceding paragraph) submitted for payment for services covered under medicare part B and provided by nonparticipating physicians and suppliers would be required to be paid within 22 calendar days of receipt by the medicare carrier. "Clean" claims submitted by participating physicians and suppliers would be required to be paid within 11 days of receipt by the medicare carrier. If the claim is not "clean" and for that reason cannot be paid within the required time period, a notice would have to be sent to the physician, supplier or beneficiary who submitted the claim to inform them of expected delays.

In the case of both part A and part B claims, if the claim is not paid and a notice is not mailed within the required time period, interest would begin to accrue (to the provider, physician, supplier or beneficiary) beginning on the day following the day payment or notice was due, and ending on the date on which payment is mailed or the date the notice is provided.

Interest payments would be made using funds otherwise available for federal administration of the medicare program, excluding those funds available for medicare contractor activities. In the Committee's view, it should rarely, if ever, be necessary for interest payments to be made on medicare claims. However, because the Health Care Financing Administration has previously issued instructions to medicare intermediaries and carriers requiring that claims processing be intentionally delayed, the Committee believes that any necessary interest payments which result from a failure to comply with requirements of this provision should be paid by the agency responsible for the implementation of this statute.

Historically, timely payment of medicare claims has not been a significant issue. However, a virtual tripling of claims processing time within two years coupled with budgetary constraints has lead to a significant cash flow problem for providers and medicare beneficiaries. The expansion of medical and utilization review activities has compounded the problem. While the Committee recognizes the value of and the need for medical and utilization review, it does not intend that such review activities lead to unreasonable delays in claims processing. Efforts should be made to alleviate the financial difficulties faced by providers of services where a significant portion of those services have been targeted for medical or utilization review.

The Committee has provided for payment of claims submitted by participating physicians and suppliers within 11 days with the hope of providing an additional incentive for physicians and suppliers to participate in the medicare program. The Committee recognizes that payment delays by the medicare program can discourage participation, and would hope to strengthen the medicare participation program by adopting stricter payment standards.

Effective date.—The elimination of periodic interim payments to prospective payment system hospitals and their exempt-units would be effective with respect to discharges occurring on or after July 1, 1987. Prompt payment of part A claims would be effective for claims received on or after July 1, 1987. Prompt payment of part B claims would be effective for claims received on or after October 1, 1987.

2. Health Maintenance Organizations and Competitive Medical Plans (sec. 10222 of the bill)

Present Law.—(a) Repeal of "two for one" conversion requirement for certain health organizations (HMO's) that had or have a medicare cost contract but which sign a medicare section 1876 risk contract must enroll two new medicare risk contract enrollees before they can convert one cost contract member. The purpose of the "two for one" conversion requirement was to limit the cost of the new risk contract provision.

(b) Require the provision of explanation of enrollee rights—There are no specific provisions to disclosure of benefits, services and patient rights to medicare beneficiaries enrolling in an HMO.

(c) Restricting waiver of requirement of 50 percent non-medicare enrollment—An HMO providing services to medicare enrollees under a section 1876 risk contract is required to maintain an enrollment consisting of no more than 50 percent medicare and medicaid beneficiaries. The Secretary of HHS has authority to waive the 50% non-medicare/medicaid enrollment standard of special circumstances warrant the waiver and if the HMO is making reasonable efforts to correct the deficiency.

(d) Requiring prompt payment of claims—There are no provisions concerning prompt payment of claims under current law.

(e) Requiring access to financial records and disclosures of internal loans—Section 1866(b) of the Social Security Act permits termination of a provider agreement where the Secretary has not been given access to certain information pertaining to persons or entities subcontracting with the provider. Under current law, there is no requirement of disclosure of "insider transactions" such as loans to related parties or organizations.

(f) Authority to impose civil money penalties—Section 1128A of the Social Security Act imposes civil money penalties on any person making certain improper claims with respect to the provision of medical items or services. The penalties include assessments up to $2,000 per item or service and double the amount claimed in lieu of damages. Rights to notice, hearing and judicial review are set forth in the law.

(g) Study of AAPCC and ACR—HMO/CMP's are reimbursed on a monthly basis on amount per enrolled beneficiary, based on the average cost of providing services to similarly situated beneficiaries in the fee-for-service sector. Reimbursement is in the amount of 95 percent of the adjusted average per capita cost (AAPCC). The

HMO/CMP is required to provide to the beneficiary a benefit package at least equivalent to the medicare benefit package. The HMO/CMP is required to develop an adjusted community rate (ACR) which reflects the HMO/CMP's standard charge for its non-medicare enrollees, adjusted to reflect the higher utilization and cost experience of the medicare population. If the AAPCC is in excess of the ACR, the HMO is required to return the difference to medicare or to develop a benefit package to provide additional services or reduced cost sharing.

(h) Allowing medicare beneficiaries to disenroll at a local Social Security Office—Under current law, enrollment and disenrollment procedures are administered by the HMO.

Explanation of provision.—(a) Repeal of "2 for 1" conversion requirement for certain health maintenance organizations. The bill would repeal the "two for one" requirement. The Committee believes that the "two for one" requirement adversely affects those medicare enrollees enrolled in an HMO who cannot convert to the risk contract because they cannot share in the additional benefits package provided to risk contract beneficiaries enrolled in the same HOM. Furthermore, in some cases it may be burdensome on HMO's by placing them in a less competitive situation.

(b) Requiring the provision of explanation of enrollee rights—All HMO/CMP's would be required to provide medicare beneficiaries an explanation of their rights as HMO enrollees, including but not limited to understandable descriptions of the benefits package, the meaning of any "lock-in" provisions, the scope of out-of-area coverage and emergency and urgently needed services and appeal rights. This information would be supplied to beneficiaries enrolled in risk contract HMO/CMP's in January 1987 and no less than annually thereafter.

(c) Restricting waiver of requirement of 50 percent non-medicare enrollment—No new waivers of current rule requiring that no more than 50 percent of enrollees be medicare or medicaid eligible would be granted other than for reasons of "disproportionate" representation of medicare and medicaid eligibles in the HMO/CMP service area. Where an existing waiver has been granted for reasons other than "disproportionate" representation, the Secretary must establish a schedule under which each waivered HMO/CMP can meet the 50/50 requirement. Where a waiver has been granted for reasons other than for "disproportionate" representation, the waivers may only be extended if the Secretary determines that the organization (or its successor) has made and is continuing to make reasonable efforts to meet scheduled enrollment goals approved by the Secretary. The Secretary would be given authority to suspend further medicare enrollment if the waivered HMO/CMP fails to meet its enrollment schedule (in order to come into compliance with the 50/50 rule). If the HMO/CMP does not have a 50/50 waiver, but is out of compliance with the 50/50 rule, the Secretary would be permitted to freeze new medicare enrollment.

(d) Requiring prompt payment of claims—the Committee believes that risk-basis HMO/CMP's should meet the same prompt payment standards for claims payment as will be applied to the rest of medicare (i.e. properly submitted claims must be paid within 22 days). Thus, consistent with other sections of this bill, risk-based HMO/

CMP's will be required to pay "clean" claims within 22 days, except where the HMO/CMP is under contract with the claimant. In instances where a contract exists between the HMO/CMP and the physician, hospital, or other claimant, the terms of the contract shall govern, and this provision shall not apply. Interest would be due on "clean" claims not paid on a timely basis. The Secretary would be given the authority, after notice and hearing, to provide direct payment to providers and suppliers in cases where the HMO/CMP has failed to meet its financial obligations and to make appropriate adjustments to the HMO's payment rate to reflect such payments.

(e) Requiring access to financial records and disclosure of internal loans—The amendment would require HMO/CMP's to provide the Secretary, upon request, access to books and records of certain subcontractors. In addition, HMO/CMP's would be required to notify the Secretary of loans and other special financial arrangements which are made between the organization and subcontractors, affiliates and related parties.

(f) Authority to impose civil money penalties—Section 1128A would be amended to give the Secretary the authority to impose civil monetary penalties, not to exceed $2,000 per violation, in cases where an entity providing items and services as an eligible organization under a section 1876 risk-sharing contract has failed substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under the risk-sharing contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals. The organization would be provided an opportunity to appeal a determination under the guidelines set forth in Section 1128A(b)(2).

(g) Study of AAPCC and ACR—The Secretary would be required to contract with an appropriate organization to study methods by which the adjusted average per capita cost (AAPCC) can be refined to more accurately reflect the average cost of providing care to different classes of patients (e.g. inclusion of variables such as activities of daily living, prior utilization history). The study would also include an assessment of mechanisms which could be developed to refine the Adjusted Community Rate (ACR). The Secretary would be required to submit legislative recommendations on methods by which the calculation of the AAPCC and the ACR may be refined by January 1, 1988.

(h) Allow Beneficiaries to Disenroll from an HMO at a local Social Security Office—The amendment would require the Secretary to expand disenrollment procedures to permit medicare beneficiaries to disenroll at their local Social Security office.

Effective date.—January 1, 1987.

3. Provisions relating to improvement of quality of care (sec. 10223 of the bill)

Present Law.—(a) Provider representation of beneficiaries on appeals and appeal of technical denials—If a beneficiary disagrees with a payment denial for services provided under medicare part A, he or she is entitled to appeal the determination. Since the inception of the medicare program, beneficiaries have been permitted to be represented in their appeals by the provider who finished the services in question. In April, 1984, HCFA issued an intermediary manual instruction prohibiting such representation. HCFA also has prohibited appeals of "technical" denials, apparently based on the view that current law does not allow for appeals of these determinations. The denials which have been subject to restrictive rules involve homebound and intermittent care requirements for home health services.

(b) Prohibition of physician incentive plans—Incentive payments to physicians to reduce or limit services provided to beneficiaries are not prohibited under current law.

(c) Study to develop a strategy for quality review and assurance—There is no provision in current law.

Explanation of Provision.—(a) Provider representation of beneficiaries on appeals and appeal of technical denials—Providers would be allowed to represent beneficiaries on appeals. To avoid possible conflicts of interest, the provider would be prohibited from representing the beneficiary with respect to issues that concern the beneficiary's possible obligation to pay the provider for services not covered by medicare. Beneficiaries would have a right to appeal any payment denial for home health services, including denials based on homebound or intermittent care requirements.

(b) Prohibition of physician incentive plans—Incentive payments to a physician by a hospital, health maintenance organization (HMO), or competitive medical plan (CMP) as an inducement to reduce or limit services to beneficiaries under the care of the physician would be prohibited. The Committee believes that such incentive payments may create a conflict of interest that may limit the ability of the physician to exercise independent professional judgment in the best interest of his or her patients.

The Committee recognizes that incentive arrangements are necessary to the operation of some types of HMOs or CMPs. The Committee also recognizes that many of these arrangements pose no inherent threat to quality of care. In particular, many HMOs and CMPs have incentive plans which allow physicians to share in an overall operating surplus or in a favorable variance in the organization's overall financial plan in relation to forecast. Under this type of plan, there is no direct link between a physician's treatment decision and the amount of any bonus received. In contrast, under other arrangements, especially those that do not involve any risk-sharing among physicians, there may be a direct link between treatment decisions and bonus payments. Furthermore, the magnitude of the incentives provided may be so great as to threaten the ability of the physician to exercise independent professional judgment. Thus, the Committee believes that some incentive arrangements should be allowed while others should be prohibited.

Because of the wide variety and complexity of compensation arrangements offered by HMOs and CMPs, the Committee decided that a comprehensive study is needed before establishing exceptions to the general prohibition. Accordingly, the provisions has a delayed effective date of January 1, 1988 as it applies to HMOs and CMPs. In addition, the provision requires the Secretary to submit a report to Congress by April 1, 1987 concerning appropriate exception to the prohibition for HMOs and CMPs.

The Committee notes that the prohibition only applies to physicians with direct patient care responsibilities. It is the Committee's intent that the prohibition not apply to hospital incentive arrangements with physicians who have a management or supervisory responsibility with respect to the operation of a hospital department (such as radiology or clinical laboratory services) insofar as the purpose of the arrangement is limited to encouraging efficiency in the operation of the department. The prohibition also would not apply to a physician who provides ancillary services under contract to a hospital.

Hospital, HMOs, and CMPs that knowingly violate the provision would be subject to civil monetary penalties of up to $2,000 for each patient with respect to whom an incentive payment was made. Physicians who knowingly accept prohibited payments would be subject to penalties of up to $2,000 for each patient.

(c) Study to develop a strategy for quality review and assurance—The Secretary would be required to contract with the Institute of Medicine to conduct a major study concerning quality of care. The study would consider a number of issues including the adequacy of current methods for measuring, reviewing, and assuring quality of care and the adequacy of methods available to correct identified quality of care problems. The study would be due 2 years after enactment.

Effective Date.—Paragraph (a) is effective on enactment. Paragraph (b) is effective 6 months after enactment as it pertains to incentive payments made by hospitals and on January 1, 1988 as it pertains to incentive payments made by HMOs and CMPs. Paragraph (c) is effective on enactment.

4. Technical amendments and miscellaneous provisions relating to parts A and B (sec. 10224 of the bill)

Present Law.—(a) Treatment of group purchasing agreements—Current law prohibits any person from receiving, giving, soliciting or offering any renumeration in return for referring or arranging for the furnishing of any item or service or in return for purchasing, leasing, or ordering any good, facility, or service for which payment can be made under medicare.

Hospitals and other providers have purchased medical supplies and equipment through their participation in group purchasing organizations (GPOs). GPOs purchase goods and services for participating intitutions. A service or transactional fee is charged to participating institutions by GPOs. In some situations, these fees are paid by the vendor on behalf of the hospital or other provider.

This practice constitutes a technical violation of medicare antifraud and abuse provisions.

(b) Extension and clarification of competitive contracting authority—The Deficit Reduction Act of 1984 provided the Secretary with the authority to enter into two competitively bid contracts under part A and two such contracts under part B to replace poor performing contractors. This authority expires on September 30, 1986.

While the Secretary has used this authority to enter into competitively bid cost contracts, competitive bidding has not been used in the negotiation of fixed-price contracts.

(c) Consolidated Omnibus Budget Reconciliation Act technical corrections—Current law contains a number of technical errors.

Explanation of provision.—(a) Treatment of group purchasing agreements—The bill would legalize the payment of administrative fees to GPOs by vendors for goods and services that may be paid for by medicare but only where full disclosure of such payment is made.

(b) Extension and clarification of competitive contracting authority—The proposal would extend the Secretary's authority to enter into competitively bid contracts for three years and clarify language to include fixed-price contracting.

(c) Consolidated Omnibus Budget Reconciliation Act technical corrections—The bill would: (1) Clarify that a one-year transition period is provided for foreign medical graduates (FMGs) who have not passed the FMGEMS. From July 1, 1986 through June 30, 1987 such an FMG will be counted as a resident at a rate equal to one-half of the rate at which the individual would otherwise be counted;

(2) Allow the Secretary to announce HMO/CMP rates by September 7 of each year rather than publish;

(3) Clarify effective date of the provision regarding penalties for billing for assistants at surgery for certain cataract operations;

(4) Allow temporary use of carrier prepayment screening as a substitute for preprocedure review;

(5) Clarify that the termination date of ACCESS demonstration project is July 31, 1987; and

(6) Correct other miscellaneous provisions.

Effective Date.—(a) The provision would apply to payments made before, on or after the date of enactment.

(b) The provision would be effective for contracts entered into on or after October 1, 1986.

(c) The provision would be effective as if it had been included in the enactment of the COBRA.

Part 3—Provisions Relating to Medicare Part B

1. Extension of premium payment provision through 1989 (sec. 10231 of the bill)

Present Law.—The Secretary is required to calculate and announce each September the amount of the monthly premium that will be charged in the following calendar year for individuals enrolled in the Supplemental Medical Insurance (part B) portion of medicare. The Secretary is required to calculate the premium amount so as to produce premium income equal to 25% of program costs for enrollees age 65 and over. The annual increase in the part B premium cannot exceed the rate of increase in the cost-of-living adjustment for the social security program. This provision has been in place since 1973.

Beginning in 1989, the premium calculation would revert to an earlier method under which the premium amount is the lower of: (1) an amount sufficient to cover one-half of program costs for the aged; or (2) the current premium amount increased by the percentage by which cash benefits were most recently increased under the cost-of-living adjustment (COLA) provisions of the social security program.

Explanation of Provision.—The bill would extend the current law requirement whereby the portion of part B program costs financed by premium income equals 25% for one additional year, through CY 1989. If there is no social security cost-of-living adjustment, the monthly premium would not be increased that year.

Effective Date.—The provision would be effective on enactment.

2. Payment for physicians' services, restrictions on reasonable charge limitation and incentives for physician participation (sec. 10232 of the bill)

Present Law.—(a) Extend and modify limits on physician fee increases—Medicare pays for physicians' services on the basis of medicare-determined "reasonable charges", the lower of a physician's billed charge, the charge customarily made by the physician, or the prevailing charge limit. Customary and prevailing charges generally are updated annually.

Annual increases in prevailing charge levels are limited by the Medicare Economic Index (MEI) which reflects general inflation and changes in physicians' office practice costs. The prevailing charge for a service as used for payment purposes is the lower of the 75th percentile of customary charges for the service in the area, or the unadjusted prevailing charge in a base year increased by the MEI.

The Deficit Reduction Act of 1984 (P.L. 98-369) froze medicare payments for all physicians for the 15-month period beginning July 1, 1984, and established the participating physician program. Participating physicians were allowed to increase their actual charges. Nonparticipating physicians were prohibited from increasing their charges above April–June 1984 levels. A participating physician is a physician who agrees to accept medicare assignment on all services. Nonparticipating physicians are free to accept or refuse assignment on a claim-by-claim basis.

The freeze on payments was extended through April 30, 1986, by emergency legislation. Under the Consolidated Omnibus Budget Reconciliation Amendments (COBRA) of 1985 (P.L. 99-277), on May 1, 1986, participating physicians received a prevailing charge increase of 3.15% plus an additional 1% increase.

The freeze on actual, customary, and prevailing charges for nonparticipating physicians was extended through December 31, 1986. COBRA established one set of maximum allowable prevailing charges for participating physicians and another set for nonparticipating physicians. Under current law, participating and nonparticipating physicians will receive a customary prevailing charge update on January 1, 1987. Participating physicians would receive an estimated 3.2% prevailing charge increase based on the MEI for 1987; nonparticipating physicians would receive a 3.15% increase based on the MEI for 1986.

(b) Prohibit administration regulation on overpriced procedures and require study—In a Federal Register notice dated February 18, 1986, the Secretary announced a proposed rule that would authorize the Health Care Financing Administration to make payment reductions under part B on the basis of "inherent reasonableness."

Under this regulation "new reasonable charge limits" could be established when the standard methodology results in "unreasonably excessive charges."

(c) Programs to increase physician participation—Each year physicians are given the opportunity to sign participation agreements. Carriers are required to administer the annual participating physician enrollment process, but do not otherwise conduct programs to encourage participation or to provide information to beneficiaries about the program. The Secretary of Health and Human Services is required to publish directories listing the name, address, and specialty of participating physicians. Directories are available for use by the public at district and branch offices of the Social Security Administration, and directories are sent to each participating physician to facilitate referrals between participating physicians.

(d) Unnecessary services—Carriers and peer review organizations (PROs) review the medical necessity of physician services provided to beneficiaries. Unnecessary services are not covered and payment is denied. By accepting assignment, physicians agree not to bill the beneficiary even if medicare payment is denied. If assignment is not accepted, physicians may bill for services which have been found to be medically unnecessary, and the beneficiary may be required to pay the physician's full charge even though no medicare reimbursement is allowed.

(e) Disclosure requirement—If assignment is accepted, the beneficiary is not liable for charges in excess of the medicare approved charge. There is no requirement that a physician inform a beneficiary of the estimated amount of the extra charges if assignment is not accepted.

Explanation of Provision.—(a) Extend and modify limits on physician fee increases—On January 1, 1987, all physicians will receive an increase in prevailing charges based on percentage increase in the Medicare Economic Index (MEI) for services provided in 1987. The percentage increase in the MEI for 1987 is estimated to be 3.2%. The increase will apply to the maximum allowable prevailing charge levels for participating and nonparticipating physicians respectively as established by COBRA, and in effect during the 8-month period ending on December 31, 1986. In future years, the respective prevailing charge levels of participating and nonparticipating physicians will be increased by the percentage increase in the MEI applicable for services provided during the year. Participating physicians would receive an additional 1% bonus increase in their prevailing charges during 1987 and in each subsequent year. The bonus for a year will apply only to services provided during the year and will not apply in the calculation of payments for any subsequent year. In other words, the bonus will not be included in the prevailing charge profile and will not compound in future years.

Assuming a 3.2% MEI increase for 1987, a 3.0% increase for 1988, a 4% increase for 1989, for a $1000 maximum allowable prevailing charge for a participating physician during the 8-month period ending December 31, 1986, the maximum allowable prevailing charges in future years would be: $1042.00 in 1987 ($1000 x 1.042), $1073.28 in 1988 ($1000 x 1.032 x 1.04), and $1116.10 in 1989 ($1000 x 1.032 x 1.03 x 1.05). The maximum allowable prevailing charge for nonparticipating physicians in effect during the 8-month period ending on December 31, 1986 would be increased by 3.2% in 1987, 3.0% in 1988, and 4.0% in 1989.

The freeze on actual charges of nonpartcipating physicians would be replaced by a limit on the rate of increase of actual charges, effective January 1, 1987. On that date, nonparticipating physicians could increase their actual charges by the 1987 MEI plus an additional 1%. In subsequent years, nonparticipating physicians could increase their charges by the MEI for the year. The additional 1% increase allowed in 1987 would be included in the base and would compound in future years.

Assuming a 3.2% MEI increase for 1987, a 3.0% increase for 1988, a 4% increase for 1989, for a $1000 actual charge for a nonparticipating physician during 1986, the physician could increase his actual charges in subsequent years to: $1042.00 in 1987 ($1000 x 1.042), $1073.26 in 1988 ($1042.00 x 1.03), and $1116.19 in 1989 ($1073.26 x 1.04).

A special limit on actual charges would apply to nonparticipating physicians without actual charge data for a procedure during the base period.

In this situation, nonparticipating physicians would be prohibited from charging more than the 50th percentile of customary charges (weighted by frequency) for the procedure as provided by nonparticipating physicians in the area during the 12-month period ending on June 30, 1986, increased by the percentage increase in the MEI since 1986.

Carriers would be required to provide available information concerning maximum allowed charges for nonparticipating physicians. Monitoring and enforcement procedures developed for the current freeze on actual charges would be continued. Nonparticipating physicians who knowingly and willfully bill more than the allowed amount would be subject to civil monetary penalties and/or exclusion from medicare.

The Secretary would be prohibited from adjusting the MEI on a retrospective basis by substituting a rental equivalence or rental substitution factor for the housing component of the consumer price index that had been used in determining the MEI prior to 1985. A retrospective adjustment of the MEI in this manner would have reduced the 1987 MEI by approximately 2 percentage points.

The Committee notes that the participating physician program is voluntary. The purposes of the program is to assist elderly who cannot afford to pay more than standard coinsurance and deductible payments. By selecting a participating physician, the beneficiary knows in advance that he or she will not be liable for any extra out-of-pocket costs. The Committee believes that elderly who cannot afford to pay extra should be provided an opportunity to select a physician who they know will always accept assignment. While the Committee is presently of the view that payment differentials are needed to encourage participation, the need for payment differentials may be reduced as the participation program becomes more fully established. In addition, the Committee believes that the need for payment differentials should be reconsidered in the context of forthcoming reforms in physician reimbursement.

(b) Prohibit administration regulation on overpriced procedures and require study—The Secretary and the Health Care Financing

Administration would be prohibited from lowering medicare payment using either the "inherent reasonableness authority" or the proposed "new reasonable charge limitations" for services covered under medicare part B.

The Committee believes that the Secretary does not have the legislative authority to impose across-the-board cuts in payments. As provided by law, payment rates would continue to be determined on the basis of actual, customary, and prevailing charges and in certain cases the lowest charge level.

The provision prohibits actions by the Secretary to require carriers to reduce payment for items or services provided under part B where the proposed reduction in payment is based on a conclusion by the Secretary that charges for particular items or services are excessive. As provided in the Consolidated Omnibus Reconciliation Act of 1985, carriers would be permitted to correct for grossly excessive or grossly deficient charges, provided that the reasonable charge that is established is realistic and equitable. This carrier authority is limited to eliminating specific charges that are grossly excessive or deficient in comparison with charges for the same or similar items or services charges by other similarly situated vendors or suppliers. Such adjustments would be required to be made for particular items and services by carriers pursuant to guidelines established by the Secretary in regulations published by the Secretary. The carriers may not use the "inherent reasonableness" authority to depart from the charge-based methodology mandated by law. The Committee intends simply to allow the carriers, in establishing the prevailing charge, to eliminate grossly deficient or grossly excessive charges for particular items and services; this authority may not be used to eliminate a significant proportion of charges which would, in effect, result in a substantial departure from the charge-based methodology mandated by law.

After consultation with the Physician Payment Review Commission, the Secretary would be required to submit a report to Congress concerning payment reductions for overpriced physician services. The report would list procedures determined to be overpriced and the recommended amount of payment reductions. The report would also describe proposals for implementing the payment reductions and measures to ensure that payment reductions do not result in increases in out-of-pocket costs for beneficiaries. The report would be due no later than April 1, 1987.

The provision is not intended to effect the validity or invalidity of the Secretary's regulation on inflation indexed charges for nonphysician services issued on September 30, 1985.

The Committee believes that certain physician services may be "overpriced" and that payment for these services should be reduced. The Committee is aware of a proposal being developed by the Administration to reduce payment for cataract surgery with intraoccular lens implantation. This proposal is based on a comparison of the amount of time required to perform cataract surgery with lens implantation to the amount of time required to perform the surgery without lens implantation. While the amount of the payment reduction that the Administration may propose may be reasonable, the Committee notes that the payment reductions likely to be proposed could result in an increase in extra charges on unassigned claims of as much as $500 per procedure. The Committee believes that such a result would be unacceptable. Accordingly, the Committee would prohibit payment reductions for "overpriced" procedures and require submission of recommendations by the Secretary concerning payment reductions and means to protect beneficiaries against increases in out-of-pocket costs.

(c) Programs to increase physician participation—during 1985, 31.4% of total charges for physicians' were made on an unassigned basis. The actual charge on unassigned claims were 26.9% higher than the medicare approved charge. Estimated beneficiary liability for extra charges on unassigned claims totalled $3.6 billion. A significant number of beneficiaries incurred extra charges on unassigned claims totalling more than $1,000 per beneficiary per year.

By selecting a participating physician, a beneficiary knows in advance that he/she will not be liable for any out-of-pocket costs other than standard coinsurance and deductable payments. Currently, about 28% of physicians participate.

To assist beneficiaries in selecting a participating physician and help them limit out-of-pocket costs, the Committee believes that a number of programs are warranted to strengthen the participating physician program.

A directory of particpating physicians would be sent to each beneficiary at the beginning of each year starting in 1988. Directories would be organized to facilitate their use by beneficiaries. One or more directories would be used in each carrier service area as appropriate. Physicians would be listed by specialty and locality. The Committee believes that distribution of the directories is needed as a practical step to assist beneficiaries who wish to select a participating physician.

Carriers would be required to develop and implement programs to recruit and retain participating physicians. Recruitment programs would include: educational and outreach activities, seminars, and/or mail and telephone contracts, in addition to the basic annual mailing of participation letters. A professional relations staff for participating physicians would be required to handle billing and other problems related to payment of claims. Carriers would also be required to develop and implement programs to familiarize beneficiaries with the participating physician program and assist them in using the program to select physicians. The Secretary would be required to provide incentive payments to carriers that were successful in inceasing the number of participating physicians. A bonus pool equal to 1% of total payments to carriers for claims processing would be available. Bonus payments would be made at the beginning of each year starting in 1988, based on the results of the participation enrollment process for the preceding year.

The medicare provider agreement for hospitals would be amended to require that hospitals make the participating physician directory available to beneficiaries. In addition, when referring a patient for further medical care on an outpatient basis, hospital personnel would be required to provide the name of at least one qualified participating physician of appropriate specialty if one is available.

(d) Unnecessary Services—The Committee believes that a consistent policy should apply with respect to liability for unnecessary services whether assignment is accepted or not. Under the provision adopted by the Committee, physicians who do not accept assignment on a claim would be prohibited from charging for unnecessary services. If payment has been made, the physician would be required to make a refund. A physician would be allowed to charge for an unnecessary service if: (i) the physician did not know and could not reasonably have been expected to know that the services would be determined to be unnecessary or (ii) the beneficiary was informed in advance that medicare coverage would be denied and agreed to pay for the service. Denial notices would be sent by the carrier (or the peer review organization) to both the physician and the beneficiary. Physicians would be required to refund payments within 30 days after receiving a denial notice unless the physician requests a reconsideration of appeal. The physician would be required to refund payment within 15 days after an adverse determination on reconsideration or appeal. A knowing and willful failure to make a refund on a timely basis would be subject to civil monetary penalties and/or exclusion from the medicare program.

(e) Disclosure requirement—The Committee believes that wherever practical, beneficiaries should be given information in advance concerning the amount of their potential liability for extra charges on unassigned claims. Without this information, beneficiaries cannot make informed decisions regarding source of care.

Under the provision adopted by the Committee, physicians providing elective surgical procedures on an unassigned basis would be required to provide fee information to the beneficiary in advance of performing the procedure. The physician would be required to provide a disclosure form that shows the physician's estimated actual charge for the procedure, the medicare approved charge, and the amount of any extra charges in excess of the medicare approved charge. The beneficiary would be required to sign the disclosure form, acknowledging receipt of this information. The requirement would only apply to elective surgical procedures as defined by the Secretary with an actual charge of $500 or more. Physicians failing to provide the disclosure would be required to refund any payments received from the beneficiary in excess of the medicare approved charges. Knowing and willful violations would be subject to civil monetary penalties and/or exclusion from the medicare program.

The Secretary would be required to develop an effective method for monitoring compliance with the requirement. One approach would be to modify the claim form to include a statement to be initialed by the beneficiary indicating that the required information had been provided. Carriers could initiate an investigation if the payment forms do not have the required initialling in a substantial number of procedures provided by a physician. Alternatively, a special notice could be provided in the explanation of medical benefits if the required initialling did not appear on the claim.

Effective Date.—Paragraph (a) is effective on January 1, 1987, except that the prohibition concerning retrospective adjustment of the MEI is effective on enactment. Paragraph (b) is effective on enactment. Paragraphs (c), (d), and (e) are effective on October 1, 1987.

3. Payment rates for renal services and improvements in administration of end stage renal disease networks and program (sec. 10233 of the bill)

Present Law.—(a) Composite rates for dialysis treatment—End Stage Renal Disease (ESRD) facilities receive a "composite" payment rate for each dialysis treatment furnished. It is based on a weighted average of facility mix (hospital-based/free-standing) and a weighted average of in-facility and home dialysis. Free-standing facilities are currently paid on average $127 per treatment and hospital-based facilities receive on average $131 per treatment. Exceptions to the composite rate are provided if it is determined that a facility is an isolated essential facility. The Administration, in proposed regulations, is planning to reduce the composite payment rate for each treatment by approximately $11.00 (9%).

(b) Payment for physicians' services—Physicians are paid a monthly capitated payment for routine services provided to outpatient maintenance dialysis patients (ESRD). The rate of approximately $187 per patient per month is based on an assumption that the physician provides one brief visit per dialysis session and one intermediate visit per month to the average ESRD patient. The fee is adjusted for the proportion of home and facility patients treated. The Administration has issued a final notice, effective August 1, 1986, to reduce the monthly capitated payment by approximately $14 (8%).

(c) Reorganization of ESRD network areas and organizations—The Secretary is required to establish network organizations to assure effective and efficient administration of the ESRD program. The 32 network organizations are responsible for coordinating and evaluating ESRD services provided within assigned geographic areas. Under the Consolidated Omnibus Budget Reconciliation Act of 1986, the Secretary may consolidate the network areas to not less than fourteen. The Secretary is proposing through regulation to reduce the number of network to 14 and modifying the functions of the networks.

Explanation of Provision.—(a) Composite rates for dialysis treatment—The facility composite rate would be reduced by approximately $5.50 per treatment (4.5%) based upon more recent cost audits, data on facility treatment mix, and home/in-facility dialysis mix. The base rate for free standing ESRD facilities could be no lower than $117.50 and for hospital based facilities, $121.50. This proposal overrides the Administration's proposed rule published in the Federal Register on May 13, 1986.

The Committee is concerned about the appropriateness of the Administration's proposed regulation to reduce the ESRD facility composite rate by approximately $11.00 per treatment. As a result, the General Accounting Office (GAO) was asked to critique the Administration's proposed reduction, considering the data and methodology used by HHS to compute the proposed rates. GAO responded in a report dated July 22, 1986, that the most recent data available to develop the proposed rates was used and used appropriately. GAO added that an exceptions process for facilities where the costs exceed the composite rate for reasons beyond their control would be appropriate.

Because of a concern that quality of care and access to care could be jeopardized by the $11.00 reduction in the composite rate proposed by the Administration, the Committee bill provides only half of the rate reduction proposed by the Administration. Further, the Committee is concerned about access to quality care in rural and isolated areas. The Committee expects HCFA to improve the exceptions process for facilities with costs higher than those reflected in the composite rate. Specifically, HCFA should define the term "isolated essential facility" to reduce the data requirements so that more facilities deserving an exception to the composite rate will be able to successfully apply for such status.

The Committee bill provides for the appeals process to be streamlined so that an exception would be deemed to be approved unless the Secretary disapproved it by not later than 45 working days from the date the application was filed with the intermediary. The Committee intends that the fiscal intermediaries will complete within 15 working days their recommendations so that HHS will have 30 working days to make its decisions. If the isolated essential facility status is granted the facility would receive reimbursement based upon its request from the date it filed for the exception.

(b) Payments for physicians' services—The monthly capitated payment (MCP) rate for physicians treating ESRD patients would be reduced by approximately $14 (8%) to reflect the shorter period of time spent on patients who receive their care at home. In 1983, the MCP rate was computed by HHS based on the average estimated physician involvement with ESRD patients, weighted by the national average percentage of patients who dialyze at home and at facilities. Generally, physicians have less involvement with home patients than with facility patients. GAO has determined that physicians could treat 3.9 home patients for every facility patient, a ratio of 3.9 to 1 rather than a 1.4 to 1 ratio used to established the 1983 rates. The Committee bill provides for the Secretary of HHS to provide for an adjustment in the home/facility physician treatment ratio (used in establishing such payment rates) from 1.4 to 1 in order to reduce by approximately $14 the average MCP rate for physician services to maintenance dialysis patients.

To better monitor the rate reductions, the Committee bill provides for the Secretary to contract with the National Academy of Science's Institute of Medicine to evaluate the effects of the proposed physician and facility rate reductions to determine if access to care or quality of care is being effected. A report to Congress on the results of the study is to be made by January 1, 1988. Once the study is completed it is the intent of the Committee to review the proposed rates.

(c) Reorganization of ESRD network areas and organizations—The Committee bill provides for a network program with a funding source that would better meet the needs of medicare ESRD beneficiaries. The bill would override the proposed rule published in the Federal Register on April 15, 1986.

The Secretary is directed to establish at least 17 ESRD networks. The Secretary is to publish in the Federal Register, after consultation with appropriate professional and patient organizations, the criteria for determining the geographic area for each network. In order to better evaluate the performance of networks in the future and to establish the reorganized networks, the Secretary is directed to establish standards, criteria and procedures for evaluating networks. The Committee intends that HHS will designate existing networks or a combination of existing networks in first establishing the new network organizations. The Committee hopes that existing networks will voluntarily combine and request being designated as the network in their geographic area. Once a network administrative organization agreement has been established it may not be terminated by the Secretary unless it fails to meet the established standards and criteria. At least one patient representative is to serve on each network council and medical review board.

The responsibilities of the networks are to include: (1) collecting, validating and evaluating patient and facility data, (2) developing quality assurance standards, (3) conducting reviews and evaluations of the delivery of ESRD services, (4) conducting on-site review of the medical care provided beneficiaries in facilities when it is deemed necessary by a medical review board or the Secretary, (5) providing recommendations to ESRD facilities for improvements in ESRD care, (6) implementing a procedure for evaluating and resolving patient grievances, and (7) working with patients and facilities in encouraging participation in vocational rehabilitation programs.

In order for the networks to perform the functions required and to place the networks on a sound financial basis the Secretary would be required to reduce the amount of each composite rate payment for each treatment by 50 cents and provide for payment of such amounts to each network. Traditionally, home dialysis treatments are provided three times a week, thus $1.50 per week would be transferred to the area network. The Committee understands that some existing and emerging technologies may require the equivalent of more or less than three dialyses per week. It is the intent of this legislation that an ESRD patient be considered to have three dialyses per week and that $1.50 per week be transferred to the area network. Each network would receive the total amount withheld from facilities in that network's geographic area. If the new networks are not operational by January 1, 1987, it is the intent of the Committee that the Secretary is to fully fund the existing networks from this source of revenue.

The Secretary would be required to establish a national end stage renal disease registry from data reported by ESRD network organizations, transplant centers and other sources. This data should cover on all ESRD patients to assist the Congress and the medical community in dealing with ESRD related issues. The Secretary is to coordinate data collection activities and determine the appropriate location of the registry. A report on the progress made in establishing the registry is due by January 1, 1987, and the registry is to be established by January 1, 1988.

Because of the controversy over the safety of reusing dialyzer filters, the Secretary would be required to establish by no later than January 1, 1988, protocols on standards and conditions for the reuse of dialyzer filters for those facilities and providers which reuse such filters. The Secretary is also directed to report by January 1, 1988, on the results of a study of the appropriateness of establishing protocols on standards and conditions for the reuse where appropriate of other dialysis supplies. The Secretary would be required to incorporate protocols established by this bill into the facilities; conditions of participation. Failure of a facility to follow an established protocol would subject the facility to denial of participation in the medicare program and to denial of payment for dialysis treatment.

Effective date.—The amendment applies to facility rates as of October 1, 1986, for physician rates August 1, 1986, for network organizations January 1, 1987.

4. Technical amendments and miscellaneous provisions related to part B (sec. 10234 of the bill)

Present Law.—(a) Additional members for Physician Payment Review Commission—The Physician Payment Review Commission as established by P.L. 99-272 consists of 11 commissioners. The purpose of the Commission is to provide recommendations concerning physician reimbursement under medicare part B.

(b) Effective date of voluntary disenrollment from medicare—Under current law, a beneficiary's coverage period under part B of medicare can be terminated by: (1) filing a notice that he or she no longer wishes to participate in the program; or (2) nonpayment of premiums.

When a beneficiary files a notice to disenroll from part B, the effective date of the termination is the close of the calendar quarter following the calendar quarter in which the notice is filed; a termination for nonpayment of premiums takes effect with the end of a grace period (not more than 90 days).

(c) Report on technical issues related to prospective payment of hosptial-based physicians—Current law contains no provision.

Explanation of Provision.—(a) Additional members for Physician Payment Review Commission—The Commission would be expanded by two members. It is the Committee's intent that at least one of the new Commissioners be a rural physician.

(b) Effective date of voluntary disenrollment from medicare—The effective date of termination when filing a notice would be the close of the calendar quarter in which the notice is filed.

(c) Report on technical issues related to prospective payment of hospital-based physicians—The Secretary would be required to study and submit a report to the Committee on Ways and Means concerning technical issues related to design and implementation of a prospective payment system for hospital-based physicians.

The report would address the following issues: (i) definition of the specific radiology, antesthesia, and pathology services that could be included in a prospective payment system, (ii) and need, if any, for a transition from hospital specific to national payment rates, (iii) methods available for adjusting payment rates to account for regional variations in practice costs or regional variation in general earnings levels, and (iv) other technical implementation problems. As part of the report, the Secretary would be required to develop a combined medicare part A and part B data file from the most recently available period for use in developing prospective payment rates for radiology, pathology, and anesthesia services (including services provided by certified registered nurse anesthetists) to beneficiaries who are hospital inpatients. The data file should consist of at least a 5% nationwide sample of all inpatient hospital admissions for medicare beneficiaries during a 6 to 12 month period of time. The data file should accumulate reasonable charges and costs for the listed services on a per-case (DRG) basis. The report and associated data files would be due as a report to the Committee on Ways and Means no later than April 1, 1987.

Effective Date.—Paragraph (a) would be effective 60 days after enactment. Paragraph (b) would be effective to notices filed on or after October 1, 1986. Paragraph (c) is effective on enactment.

Part 4—Improved Review of Quality by Peer Review Organizations

1. *Improved Review of quality by Peer Review Organizations (sec. 10241 of the bill)*

Present Law.—(a) PRO Review of Hospital Denial Notices—By regulation, hospitals are authorized to make determinations that further inpatient care is no longer medically necessary. If the attending physician concurs with this determination, the hospital may serve the beneficiary with a discharge notice and may begin to charge for continued stay beginning with the third day after serving the notices. The beneficiary may appeal the discharge notice to a peer review organization (PRO). If the PRO reverses the hospital's determination, the hospital may not bill for continued inpatient stay. The PRO is required to decide the appeal within three working days after receipt of the appeal. Under current policy, a beneficiary may incur financial liability for several days of continued stay before receiving notice of the PROs decision in the event of an adverse decision.

(b) PRO Review of Inpatient Services and Early Readmissions—PROs review the necessity and quality of hospital services provided to beneficiaries. To inititate review process, PROs must receive data concerning the number and type of hospital discharges from hospitals in the PROs service area. This information is provided to the PROs by the medicare fiscal intermediaries. There is no statutory provision regarding timely provision of data to the PROs. Under PRO contracts for 1986–88, PROs will be required to review all readmissions to a hospital where the readmission occurs within 15 days after initial discharge.

(c) Requiring PRO Review of Quality of Care—PROs are required to review a sample of the professional activities of health care practitioners and providers for purposes of determining whether the services provided were medically necessary and met professionally recognized standards of care. Under a provision of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, PROs are required to review services provided by health maintenance organizations (HMOs) and competitive medical plans (CMPs) effective January 1, 1987. The COBRA provision does not specify a required level of effort for PRO review of HMO and CMP services.

(d) Requiring Consumer Representation on PRO Boards—Current law contains no provision.

(e) Improving PRO Responsiveness to Beneficiary Complaints—Current law does not require that PROs review beneficiary complaints concerning quality.

(f) Sharing of Information by PROs—PRO confidential information is subject to rigorous protection. State ombudsmen and State protection and advocacy officials and national accreditation bodies, such as the Joint Commission on Accreditation for Hospitals, are not entitled to share PRO confidential information.

(g) PRO Funding—The costs of PRO review of inpatient hospital services is considered to be a cost incurred by hospitals in providing services to beneficiaries. Hospitals are required to have contracts with PROs under which PROs receive reimbursement for review costs by means of a direct transfer of funds by the Secretary from the Federal Hospital Insurance Trust Fund. Under current law, the aggregate amount to be paid to all PROs during a year must be no less than the aggregate amount expended during fiscal 1986 on PRO reviews adjusted for inflation.

Explanation of Provision.—(a) PRO Review of Hospital Denial Notices—The law would be amended to establish a statutory right to appeal a hospital discharge notice to a PRO and to ensure that a beneficiary who makes an appeal is not liable for continued stay until after receiving notice of the PROs decision. The beneficiary would have until noon on the next working day after receiving a discharge notice to file an appeal. The hospital would be required to transmit a copy of the medical records to the PRO prior to the close of business on the next working day after the day the beneficiary receives the discharge notice. The PRO would have one full working day after receiving the appeal and the records to decide the appeal and provide notice of its decision. The hospital would be prohibited from charging the beneficiary receives notice of the PROs decision.

The provision as adopted by this Committee does not require PROs to decide beneficiary appeals during weekends. If the number of appeals under this provision increases substantially, the Committee believes that may be appropriate to reconsider the matter and require that PROs consider beneficiary appeals during weekends.

(b) PRO Review of Inpatient Services and Early Readmissions—The Secretary of Health and Human Services would be required to ensure that PROs receive each month, on a timely basis, either directly from hospitals or indirectly through fiscal intermediaries, hospital data needed to initiate required reviews of hospital care on a timely basis. PROs would be required to review at least a sample of readmissions occurring within 31 days after the date of the most recent discharge from the hospital. It is the Committee's understanding that a large percentage sample of readmissions would be reviewed during the first two weeks after initial discharge than during the subsequent two week period.

(c) Requiring PRO Review of Quality of Care—Each PRO would be required to devote proportion of its efforts to reviewing quality of care. Each Pro would also be required to provide a reasonable allocation of its quality of care review activities among the different settings in which services are provided to medicare beneficiaries. Factors to be considered in establishing a reasonable allocation of PRO review activities include the following—(i) whether there is reason to believe that there is a particular need for reviews of particular cases or settings because of previous problems regarding quality of care; (ii) the cost of the reviews and the likely yield of reviews in terms of the number and seriousness of quality of care problems likely to be detected as a result of the review effort; and (iii) the availability and adequacy of alternative quality review and assurance mechanisms.

The Committee believes that it is important to remove any remaining uncertainty with respect to the requirement that PROs must review services provided by health maintenance organizations (HMOs) and competitive medical plans (CMPs). Under the provision approved by the Committee, PROs are required to initiate review of HMO and CMP services on January 1, 1987. The purpose of these reviews (which are to include both inpatient and outpatient services) is to determine whether the quality of care provided to beneficiaries meets professionally recognized standards of health care, including whether appropriate health care services have not been provided or have been provided in inappropriate settings. By January 1, 1988, the level of effort of PRO review for beneficiaries enrolled in HMOs and CMPs must be equivalent on a per beneficiary basis to the level of effort of PRO review (including both quality and utilization reviews) of services provided to beneficiaries who are not enrolled in HMOs or CMPs.

The Committee recognizes that HMOs and CMPs provide health care services in a manner that is distinctive. Accordingly, PRO review of HMO and CMP services should take into account unique characteristics of HMOs and CMPs. To ensure that PRO protocols for review of HMO and CMP services are appropriate, it is the Committee's intent that the standards, criteria, and procedures used for PRO review of HMO and CMP services be developed with the advice and consultation of respresentatives of the HMO and CMP industry. Representatives of PROs should also be involved in this consultative process.

(d) Requiring Consumer Representation on PRO Boards—Each peer review organization (PRO) would be required to name at least one consumer representative to its board of directors.

(e) Improving PRO Responsiveness to Beneficiary Complaints—PROs would be required to conduct a review of all written complaints about the quality of medicare covered services if the complaint is filed by a beneficiary or a legally responsible person acting on behalf of the beneficiary. The extent of the required investigation is to be determined on a case-by-case basis by the PRO depending on the circumstances. The PRO would be required to inform the complainant of its conclusions regarding the complaint and disposition of the complaint. Before concluding that the services involved fail to meet professionally recognized standards of care, the PRO would be required to provide notice and an opportunity for discussion with the practitioner or provider involved in the complaint.

(f) Sharing of Information by PROs—National accreditation bodies, such as the JCAH, acting pursuant to Section 1865 of the Social Security Act and State agencies responsible for licensing or certification of providers and practitioners would have access to confidential PRO information upon request if the information: (i) relates to a specific case or possible pattern of substandard care; and (ii) is needed for the body or agency to carry out its official function. State ombudsmen, and State protection and advocacy officials would have access to PRO confidential information upon request if the PRO determines that the information requested: (i) relates to quality of care; (ii) may reflect a failure in a substantial number of cases or a gross and flagrant failure in one or more instances to provide services of a quality which meets professionally recognized standards of care; and (iii) is needed by the body, ombudsman, or official to carrying out official duties.

(g) PRO Funding—The new PRO activities specified in this provision would be considered to be a cost incurred by providers (including HMOs and CMPs) providing covered services to beneficiaries and would be reimbursed in the aggregate by an amount not less than an amount determined by the Secretary to be sufficient to cover the costs of these activities. Funds identified under Section 1866(a)(1)(F) of the Social Security Act for PRO review of inpatient hospital services would continue to be used solely for the purpose inpatient hospital reviews by PROs and would not be used to cover the cost of the new PRO functions specified in this provision. Hospitals, SNFs, home health agencies, HMOs, and CMPs would be required to execute agreements with PROs regarding the review activities specified in this provision under which the activities would be considered to be a cost of providing services to be reimbursed by means of a direct transfer of funds from the Federal Hospital Insurance Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund in appropriate amounts.

Effective Date.—Paragraph (a) would apply to hospital discharge notices served to beneficiaries starting with the first day of the first month that begins 30 days after enactment. The requirement under paragraph (b) concerning prompt submission of data would be effective no later than 6 months after enactment. The requirement under paragraph (b) concerning PRO review readmissions would be effective for PRO contracts entered into or renewed on or after January 1, 1987. The requirement under paragraph (c) concerning allocation of funds for PRO review is effective on January 1, 1987. The requirement of paragraph (c) concerning the level of effort of PRO review of HMOs and CMPs is effective on January 1, 1988. Paragraph (d) would apply to PRO contracts entered into or renewed on or after January 1, 1987. The requirement of paragraph (e) concerning review of beneficiary complaints amendment would apply to complaints received by PROs on or after the first day of the first month that begins 9 months after enactment. Paragraph (f) concerning PRO confidential information apply to requests for information received on or after the end of the first 6-month period after enactment. Paragraph (g) concerning PRO funding has an effective date of October 1, 1987 as it pertains to PRO review agreements with hospitals, SNFs, and health agencies and has an effective date of January 1, 1987 as it pertains to PRO review agreements with HMOs and CMPs.

Part 5—Assuring Access to Health Care

1. Incentives for the establishment of State health insurance pools (sec. 10251 of the bill)

Present law.—Under present law, states are not required to establish health insurance pools for the purpose of offering health insurance to people who are otherwise unable to purchase health insurance. Beginning in 1974 ten states have enacted laws establishing comprehensive health insurance pools. These states are: Rhode Island, Connecticut, Florida, Indiana, Minnesota, Montana, Nebraska, North Dakota, Wisconsin, and Tennessee. The state insurance pools are independent nonprofit corporations governed by a board and administered by an insurance carrier selected by the board.

Only health insurance carriers who provide health insurance plans which are governed by state law are required to participate in the pools. Because ERISA preempts state law, employer-based, self-funded health plans have been exempt from any state mandate.

Explanation of provision.—The Committee bill provides for each state to establish an insurance pool for people who do not have access to employment-based health insurance. Policies offered by the pools would have to be available to anyone in the state, expect for individuals eligible for part A of medicare, regardless of health status.

Once the state establishes a health insurance pool, any employer, with 20 or more employees, doing business in the state would be required to participate in the insurance pool. If the employer did not participate in the pool, a tax equal to 5% of gross wages (as defined in the Internal Revenue Code Sec. 3401) paid or incurred during the taxable year would be imposed. If a state does not create a pool, there would be no tax on employers.

The insurance policies offered under the state pool would be designed to offer coverage typical of large employer plans. A premium could be charged based upon the reasonable actuarial determination of anticipated experience and expected expenses. The premium rate would be expected to ensure that the pool is self-supporting, but in no event could it be higher than 150% of average premium rates for individual standard risks in the state for comparable coverage. To the extent the insurance pool is not self-supporting from premiums, losses would be made up by equitable assessments on all participating employers in the state.

The state insurance pool would not be permitted to establish a life-time limit on benefits of less than $500,000 and would have to cap annual out-of-pocket expenses for covered services at no more than $1,500 for individual coverage and $3,000 for family coverage. A choice of deductibles could be offered but could not exceed $1,000 for each covered individual.

Exclusions of coverage for preexisting conditions would be permitted but for no more than 6 months. Covered services offered under the plan would be required to include the purchase and repair of medically necessary durable medical equipment.

The Committee realizes that the state health insurance pools defined under this provision are generally designed for people who can afford to pay the premiums. A state or other entity would be permitted to provide payment of part or all of the premium of an enrollee and could vary the amount of the payment based on the enrollee's income or on some other basis.

Based upon testimony, pool losses ranged from $0.50 to $1.40 per person covered by health insurance in the states having pools in place. The Committee therefore believes, based on the experience of the states which have enacted similar legislation, that the general losses will be small.

The Committee anticipates that the establishment of these health insurance pools will take some pressure off the need for new or existing public programs for people who do not have access to health insurance.

The Committee bill intends that each State should establish a pool by not later than January 1, 1988, or if later, the end of the first regular State legislative session that begins after the date of enactment of this Act.

Effective date.—The proposal would be effective for taxable years beginning on or after January 1, 1988.

2. COBRA technical amendments relating to continuation of employer-based health insurance coverage (sec. 10252 of the bill)

Present law.—Section 10001 of the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) amended the Internal Revenue Code to require that group health plans of covered employers provide qualified beneficiaries the opportunity to continue health care coverage under the plan if they paid up to 102% of the applicable premium in certain instances where coverage under the employer-based health plan would otherwise be terminated. The continuation coverage amendments apply to plan years beginning on or after July 1, 1986. In the case of collectively bargained plans, the amendments do not apply to plan years beginning before the later of (1) the date on which the last collective bargaining agreement relating to the plan terminates, or (2) January 1, 1987.

(a) Modification of coverage—Under current law the coverage must consist of coverage which is identical to the coverage provided under the plan to similarly situated beneficaries under the plan with respect to whom a qualifying event has not occurred.

(b) Maximum period of continuation coverage—Under current law the maximum period of continuation coverage relating to terminations and reduced hours is 18 months and for divorced, legally separated, medicare ineligible spouses and their dependents and dependents who lose their dependent status under the plan 36 months. No provision was made for multiple qualifying events. These time periods are the general rule unless the employer ceases to provide any group health plan to any employee, the qualified beneficiary fails to pay the premium in a timely manner or becomes a covered employee under any other group health plan, or becomes entitled to medicare, or remarries and is covered under another group health plan.

(c) Grace period for payment of premiums—Under current law coverage ceases under the plan by reason of a failure to make timely payment of any premium required under the plan with respect to the qualified beneficiary. No specific time period is specified.

(d) Election of beneficiaries—Under current law each qualified beneficiary is entitled to a separate election but a spouse of a covered employee or a covered employee can elect coverage on behalf of any other qualified beneficiary in the family who would lose coverage under the plan by reason of the qualifying event.

(e) Notice requirement—Under current law the employer of an employee under a plan must notify the plan administrator within thirty days of a qualifying event if the qualifying event is the death of the employee, the termination (other than by reason of such employee's gross misconduct), or reduction of hours of the covered employee's employment, or if the covered employee becomes entitled to medicare. Divorced or legally separated spouses and dependent children ceasing to be dependents under the plan are required to notify the plan administrator of the occurrence of such events but no time limit was established for notifying the plan administrator.

Explanation of provision.—(a) Modification of coverage—The general rule is that in all respects qualified beneficiaries are to be treated under the plan as similarly situated beneficiaries for whom a qualifying event has not taken place. For example, if the plan provides for an open enrollment period then qualified beneficiaries must be able to elect in the same manner as active employees. This means that a qualified beneficiary by reason of being a spouse of a covered employee would have the same rights as active employees during an open enrollment period and would not be limited to the rights of spouses of covered employees. By health benefits, the Committee means to include health benefit plans that include dental and vision care as defined in Sec. 213 of the Internal Revenue Code. This does not mean that an employer could compel the qualified beneficiary to pay for non-core benefits even if active employees have to accept core and non-core services under the plan.

(b) Maximum period of continuation coverage—The bill clarifies that a qualified beneficiary may have more than one qualifying event which entitles the beneficiary to continuation coverage but in no case may the coverage period with respect to such events (other than the peroid applicable to a qualifying event described in paragraph (3) (F) of the law) exceed a 36-month period. For example, a qualified beneficiary retires and then dies or is divorced, the qualified beneficiary spouse then has a second qualifying event which entitles this spouse to a total of 36 months of continuation coverage. However, the second qualifying event must take place during the period of coverage of the first qualifying event to be eligible for a total of 36 months from the date of the first qualifying event.

(c) Grace period for payment of premiums—The bill clarifies that the grace period is the longer of three periods: 30 days, the period the plan allows employees, or the period the insurance company allows the plan or employer whichever the case may be.

(d) Election by beneficiaries—The Committee bill clarifies that each qualified beneficiary is entitled to a separate election. The Committee realizes that normally an employed worker will elect coverage for the entire family. If the covered employee does not elect continuation coverage, however, the spouse and or dependent children are entitled to elect coverage. Moreover, even if the employee elects certain coverage, the spouse and or dependents may elect different coverage.

(e) Notice requirement—The Committee bill establishes a 60-day notification period for divorced or legally separated spouses of covered employees or dependent children ceasing to be dependent children under the generally applicable requirements of the plan, to notify the plan administrator of such qualifying events.

Effective date.—The amendments made by these provisions are effective as if they had been included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

3. Continuation coverage for retirees in cases of bankruptcies (sec. 10253 of the bill)

Present law.—Section 10001 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) entitles employees covered under the employer's health plan who terminate employment up to 18 months of continuation coverage under the employer plan if they pay up to 102% of the applicable premium. However, this provision is only effective for an employer health plan year that begins on or after July 1, 1986. A special rule is provided for collectively bargained plans. Current law makes no provision for retirees who retire before the employer's new health plan year begins on or after July 1, 1986. Current law also does not include as a qualifying event, for purposes of triggering the continuation option, an employer filing for Title 11 bankruptcy proceedings.

Explanation of provision.—The bill would amend section 10001 of COBRA to include a new qualifying event, a new class of qualified beneficiaries and a new period of coverage for certain retirees, their spouses and dependent children and widows. Specifically, the legislation would define as a qualifying event, with respect to the employer from whose employment the covered employee retired at any time, the filing of a proceeding in a case under Title 11, U.S. Code, commencing on or after July 1, 1986. In order to be considered a qualifying event, the proceeding would have to result in a substantial elimination of coverage for the qualified beneficiary as defined below.

In the case of such a qualifying event a loss of coverage includes a substantial elimination of coverage with respect to a qualified beneficiary, as described below, within one year before or after the date of commencement of the Title 11 proceeding. For example, an employer contemplating filing for Title 11 bankruptcy proceedings may not in the year before or after filing for Title 11, reduce the health insurance coverage so that it offers minimal coverage. Such a reduction in health insurance coverage for retirees, their spouses and dependent children and widows, would trigger the continuation coverage provision included in this legislation.

The Committee is concerned that retirees who retire before the COBRA provision becomes effective for the employer's plan year beginning on or after July 1, 1986, might lose their employer-based health insurance, if the employer filed for Title 11 bankruptcy proceedings.

In the case of a qualifying event resulting from an employer filing for Title 11 bankruptcy proceedings, a qualified beneficiary would be defined as including a covered employee who retired on or before the date of substantial elimination of coverage and any other individual who, on the day before the qualifying event, is a beneficiary under the plan: (1) as the spouse of the covered employee, (2) as the dependent child of the covered employee, or (3) as the surviving spouse of the covered employee. The term covered employee means an individual who is (or was) provided coverage under a group health plan by virtue of the individual's employment or previous employment with an employer. This means that the definition of covered employee includes an individual who has retired from employment from the employer and is receiving health benefits from that employer.

A qualified beneficiary who had retired on or before July 1, 1986, as described in the above paragraph, the spouse and dependent children and the widow of such a retired qualified beneficiary who were also qualified beneficiaries under the plan on the day before the qualifying event are entitled to elect to continue in the employer-based health insurance plan until the death of the covered employee. A surviving spouse who was a qualified beneficiary under the plan on the day before the qualifying event is entitled to elect continuation coverage until death. However, after the date of the death of the covered employee a new qualifying event is triggered which would entitle the surviving spouse and dependent children who are qualified beneficiaries of the covered employee to elect 36 months of continuation coverage.

As defined in section 10001 of COBRA, coverage ceases on: (1) the date on which the employer ceases to provide any group health plan to any employee, (2) failure to make timely payment of any premium required under the plan with respect to the qualified beneficiary, (3) reemployment resulting in a covered employee being covered under any other group health plan or (4) remarriage resulting in coverage under a group health plan. However, entitlement to medicare coverage does not terminate coverage with respect to qualified beneficiaries in the case of a qualifying event resulting from an employer filing for Title 11 bankruptcy proceedings. It is the intent of this provision to override the general effective date of section 10001 of COBRA and the collective bargaining agreement effective date of COBRA.

Notwithstanding this legislation, the Committee understands the contractual obligation of some employers that have filed for Title 11 bankruptcy is very clear and that they cannot divest themselves of the obligation to provide retiree health insurance. The Committee bill includes this provision because the contractual obligation may not be as clear in other cases. By including this provision in the bill the Committee does not intend to express any opinion as to the additional rights or obligations that may exist under collective bargaining agreements or any other Federal or state law.

Effective date.—In general this legislation takes effect as if included in section 10001 of COBRA. However, the legislation shall apply in the case of plan years ending during the twelve month period beginning July 1, 1986, in the case of a qualifying event resulting from an employer filing for Title 11 bankruptcy proceedings as defined above or relating to the death of the covered employee occurring after July 1, 1986. A special transition rule applies to covered employees who have died after July 1, 1986.

Subtitle D.—Revenue Provisions

1. Extension of telephone excise tax (secs. 10301 and 10302 of the bill)

Present law.—A three-percent excise tax is imposed on amounts paid for local telephone service, toll telephone service, and teletypewriter exchange service (Code sec. 4251). The tax is paid by the service-recipient to the person rendering the service; the service-provider in turn remits the tax to the Federal Government.

Exemptions from the tax are provided for communications services furnished to news services (except local telephone service to news services), international organizations, the American National Red Cross, servicemen in combat zones, nonprofit hospitals and educational organizations, and State and local governments. Other exemptions are provided for amounts paid for installation charges and for certain calls from coin-operated telephones (sec. 4253). The tax does not apply to private communications systems (sec. 4252(d)).

Under present law, this exicse tax is scheduled to terminate, effective with respect to amounts paid pursuant to bills first rendered after December 31, 1987.

Explanation of provision.—The bill extends the telephone excise tax at a three-percent rate for two years, through December 31, 1989.

The bill further requires the Treasury Department to study the possible effects of this tax in encouraging businesses to create their own, private telecommunications systems, bypassing regulated commercial carriers. This study is to consider the loss of excise tax receipts as a result of such systems and the appropriateness of continuing the present-law exemptions for private communications services and for other specified purposes or entities. The study is to be submitted to the Committee on Ways and Means and the Committee on Finance before January 1, 1988.

Effective date.—This provision is effective on the date of enactment.

III. COST ESTIMATES

A. Committee Estimate

Table 1 below summarizes the budget effects of the spending and tax provisions of the Committee's recommendation under the same economic and baseline assumptions used in the fiscal year 1987 budget resolution. These estimates are identical to those made by the Congressional Budget Office and the Joint Committee on Taxation. The budget effect includes all impacts the provision may have on other programs. For example, many of the Medicare and AFDC provisions have impacts upon the Medicaid program.

Aggregate savings over the 3-year period from fiscal 1987 to 1989 of the Committee's recommendations are in excess of the reconciliation instruction given to the Committee in the fiscal year 1987 budget resolution. The budget resolution assumed additional spending because it assumed the Committee would lower the inpatient hospital deductible. Thus, as shown in Table 1, net deficit reduction assumed by the resolution was $11.6 billion. Total net deficit reduction achieved by the Committee's recommendations over the three-year period from fiscal year 1987 to 1989 is $12.0 billion, some $.4 billion above the savings assumed in the resolution.

TABLE 1.—OUTLAY AND REVENUE PROVISIONS AS RECOMMENDED BY THE COMMITTEE ON WAYS AND MEANS RELATED TO THE REQUIREMENTS OF THE FISCAL YEAR 1987 BUDGET RESOLUTION

[Savings, in millions]

	Fiscal year—			
	1987	1988	1989	3-year total
A. Budget Resolution Targets				
Reconciliation instruction	$4,350	$4,095	$4,190	$12,635
Allowed spending	(250)	(400)	(350)	(1,000)
Net deficit reduction	4,100	3,695	3,840	11,635
B. Committee Recommendations				
Social Security:				
Remove COLA Trigger				
Accelerate state & local deposit of payroll taxes	394	294	1,158	1,846
Public Assistance:				
AFDC–UP	0	(115)	(255)	(370)
FY 1987 Federal AFDC percentage	(15)			(15)
IEVS targeting				
FUTA repayment tax extension	0	903	1,247	2,150
Medicare:				
Set Hospital deductible at $500 in 1987	(580)	(230)		(810)
Hospital payment increases of 1.3 for fiscal year 1987 and market basket minus 2.0 percent for fiscal year 1988	250	1,100	1,320	2,670
Limit aggregate capital payment increases to 10 percent annually	155	355	590	1,100
Include Puerto Rico into PPS system	(10)	(15)	(20)	(45)
Quality protections	(74)	(95)	(193)	(362)
Medicare off-budget in 1987				
Eliminate periodic interim payments with prompt pay for providers	1,970	(480)	130	1,620
HMO amendments				
Eliminate HMO 2-for-1 rule	(25)	(50)	(45)	(120)
Extend part B 25 percent premium policy for 1 year	0	0	440	440
Extend and modify limits on physician fee increase	(55)	(45)	50	(50)
Programs to increase physician participation*		100	100	200
Disallow administrative regulation on overpriced procedures and require study				
Reduce rates to ESRD facilities and physicians and strengthen networks	92	100	105	297
Technical amendments and miscellaneous provisions				
High risk health insurance pools				
COBRA health insurance amendments				
Revenues:				
Extend telephone excise tax for 2 years	0	1,337	2,290	3,627
Total (net deficit reductions)	2,102	3,059	6,817	11,978

* Not included in totals. Dollar amounts determined by appropriation action.

Note: Numbers in parenthesis indicate the provision will cost not save money.

B. CBO estimates

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 28, 1986.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimates of the provisions in the House Committee on Ways and Means reconciliation package. Provisions with no outlay or revenue effect are not listed in the tables. The estimates are shown in two separate attachments—one showing estimated outlay effects and one showing estimated revenue effects.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER, *Director.*

TABLE 1.—THE ESTIMATED REVENUE EFFECTS OF THE COMMITTEE ON WAYS AND MEANS RECONCILIATION PROVISIONS RELATIVE TO THE BUDGET RESOLUTION BASE

[Fiscal years, in billions of dollars]

	1987	1988	1989	3-year total
Extend telephone excise tax for 2 years, net		1.337	2.290	3.627
Extend FUTA repayment tax for two years		.903	1.247	2.150
Accelerate state and local Social Security deposits	.394	.294	1.158	1.846
Eliminate 3 percent trigger for cost-of-living increases	0	0	0	0
Total revenue effect, net	.394	2.534	4.695	7.623

TABLE 2.—ESTIMATED OUTLAY EFFECTS OF THE COMMITTEE ON WAYS AND MEANS RECONCILIATION BILL RELATIVE TO THE BUDGET RESOLUTION BASELINE

[By fiscal year, in millions of dollars]

Provisions	1987	1988	1989	3-Year total
Subtitle A—OASDI Provisions				
Direct Spending: Eliminate trigger for COLA's	(1)	(1)	(1)	(1)
Subtitle B—Provisions Relating to Public Assistance and Unemployment Taxes				
Direct Spending:				
Mandate AFDC:				
Budget authority	0	115	255	370
Outlays	0	115	255	370
Hold harmless 1987 change in Federal match rate:				
Budget authority	15	0	0	15
Outlays	15	0	0	15
Amended Income Verification:				
Budget authority	(2)	(2)	(2)	(2)
Outlays	(2)	(2)	(2)	(2)

TABLE 2.—ESTIMATED OUTLAY EFFECTS OF THE COMMITTEE ON WAYS AND MEANS RECONCILIATION BILL RELATIVE TO THE BUDGET RESOLUTION BASELINE—Continued

[By fiscal year, in millions of dollars]

Provisions	1987	1988	1989	3-Year total
Subtitle C—Medicare and Health Programs (Part A of Medicare would be off-budget as a result of this legislation)				
Direct Spending:				
PART 1—PROVISIONS RELATING TO MEDICARE PART A ONLY				
Limit 87 deductible to $500:				
Budget authority	−60	−85	−90	−235
Outlays	580	230	0	810
Limit Hospital increase (1.3 percent in 87, mb-2 in 88):				
Budget authority	10	80	195	285
Outlays	−250	−1,100	−1,320	−2,670
Limit capital—86 plus 10 percent, 20 percent, and 30 percent PPS Facilities only:				
Budget authority	10	35	80	125
Outlays	−155	−355	−590	−1,100
Puerto Rico:				
Budget authority	0	−5	−5	−10
Outlays	10	15	20	45
Quality bill—Part A:				
Budget authority	−5	−10	−20	−35
Outlays	58	70	167	295
PART 2—PROVISIONS RELATING TO MEDICARE PARTS A AND B				
PIP/prompt pay:				
Budget authority	96	920	320	1,335
Outlays	−1,970	480	−130	−1,620
HMO 2 for 1 rule:				
Budget authority	30	55	45	130
Outlays	25	50	45	120
Quality bill:				
Budget authority	2	1	1	4
Outlays	6	8	8	22
PART 3—PROVISIONS RELATING TO MEDICARE PART B				
Part B premiums set at 25 percent in 1989:				
Budget authority	0	0	−440	−440
Outlays	0	0	−440	−440
Physician increase, nonpar 3.2 percent and pars at 4.2 percent				
Budget authority	50	30	−70	10
Outlays	55	45	−50	50
ESRD:				
Budget authority	−98	−103	−108	−309
Outlays	−92	−100	−105	−297
PART 4—IMPROVED REVIEW OF QUALITY BY PROs				
Improved review by PROs:				
Budget authority	3	4	4	11
Outlays	10	17	18	45
PART 5—ASSURING ACCESS TO HEALTH CARE				
Continue covering retirees in cases of bankruptcies:				
Budget authority	(2)	(2)	(2)	(2)
Outlays	(2)	(2)	(2)	(2)
Authorization:				
PART 3—PROVISIONS RELATING TO MEDICARE PART B				
Physician participation: Outlays	0	100	100	200

TABLE 2.—ESTIMATED OUTLAY EFFECTS OF THE COMMITTEE ON WAYS AND MEANS RECONCILIATION BILL RELATIVE TO THE BUDGET RESOLUTION BASELINE—Continued

[By fiscal year, in millions of dollars]

Provisions	1987	1988	1989	3-Year total
Total—Direct spending (on and off budget):				
Budget authority	52	1,037	167	1,256
Outlays	−1,708	−525	−2,122	−4,355
Total—Authorizations:	0	100	100	200

[1] No change relative to CBO baseline that assumes the payment of a 3.4% COLA.

[2] Less than $500,000.

Note.—This table summarizes the bill's estimated impact on the federal budget, relative to both current law and budget resolution baseline, as adjusted for enacted legislation. The House Budget Committee has specified that reconciliation savings are to be measured from the baseline used by the budget conferees adjusted for subsequently enacted legislation.

IV. ADDITIONAL VIEWS OF MR. FRENZEL

The Ways and Means Committee's reconciliation action fell $2 billion short of its reconciliation target for FY 1987. It ought to be rejected by the Budget Committee, the Rules Committee and the House.

Despite its inadequacies, the Ways and Means reconciliation won't be rejected. Instead, victory will be declared because the 3 year reconciliation savings do achieve the $11.6 billion target.

In my judgment, the first year, FY 1987, is the only one that counts. If we can't meet our Gramm-Rudman-Hollings objective in 1987, we surely aren't going to meet it in 1988 or 1989.

The Committee has fallen short, therefore, of its most important obligation. That isn't good news, but it isn't as bad as what follows.

The bad news is the way in which the Committee achieved its 3 year target. About half of it is in new taxes.

The new taxes are an extension of telephone taxes totaling $3.6 billion, and an extension of FUTA taxes of $2.2 billion. The telephone tax, of course, falls most heavily on individual consumers.

The FUTA tax, a 2/10 of 1% levy of payroll to pay the debt of an overambitious unemployment compensation program of the mid-1970s, is a burden that discourages employers from hiring new employees. A payroll tax is inevitably, a tax on jobs. This one should be allowed to expire in mid 1987 when the debt is paid off.

Not meeting the target is once; inflicting new taxes is twice; but the Committee really struck out when it included new programs in its reconciliation bill. One such adventure made mandatory a now discretionary state AFDC program costing nearly $400 million.

When a responsible committee like Ways and Means adds new programs, other more profligate committees seize on that action to add new programs of their own.

Overall, the Committee's reconciliation bill is inadequate, unfair, and mischievous. It should be rejected. The Committee should be directed to make real spending reductions without new taxes or new programs.

Bill Frenzel.

CHANGES IN EXISTING LAW

In compliance with clause 3 of the rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Social Security Act

* * * * * * *

TITLE II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

* * * * * * *

DEFINITION OF EMPLOYMENT

SEC. 210. For the purposes of this title—

Employment

(a) * * *

Medcare Qualified Government Employment

(p)(1) * * *

(2) Service shall not be treated as employment by reason of paragraph (1)(B) if the service is performed—

(A) * * *

* * * * * * *

[(C) by an individual, as an employee of a State or political subdivision thereof or of the District of Columbia, serving on a temporary basis in case of fire, storm, snow, earthquake, flood or other similar emergency, [or]

(D) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or a medical or dental resident in training[.]*, or*

(E) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $100.

* * * * * * *

TITLE VII—ADMINISTRATION

* * * * * * *

BUDGETARY TREATMENT OF TRUST FUND OPERATIONS

SEC. 710. (a) * * *

[(b) The disbursements of the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund shall be treated as a separate major functional category in the budget of the United States Government as submitted by the President and in the congressional budget, and the receipts of such Trust Funds, including the taxes imposed under sections 1401(b), and 3111(b) of the Internal Revenue Code of 1954, shall be set forth separately in such budgets.]

(b)(1) The receipts and disbursements of the Federal Hospital Insurance Trust Fund and the taxes imposed under sections 1401(b), 3101(b), and 3111(b) of the Internal Revenue Code of 1954, shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

(2) The disbursements of the Federal Supplementary Medical Insurance Trust Fund shall be treated as a separate major functional category in the budget of the United States Government as submitted by the President and in the congressional budget, and the receipts of such Trust Fund shall be set forth separately in such budgets.

(c) No provision of law enacted after the date of the enactment of the Balanced Budget and Emergency Deficit Control Act of 1985 (other than a provision of an appropriation Act that appropriates funds authorized under the Social Security Act as in effect on the date of the enactment of the Balanced Budget and Emergency Deficit Control Act of 1985) may provide for payments from the general fund of the Treasury to the Federal Old-Age and Survivors Insurance Trust Fund [or] , the Federal Disability Insurance Trust Fund, [or for payments from either] *or the Federal Hospital Insurance Trust Fund, or for payments from any* such Trust Fund to the general fund of the Treasury.

* * * * * * *

TITLE XI—GENERAL PROVISIONS AND PEER REVIEW

* * * * * * *

PART A—GENERAL PROVISIONS

* * * * * * *

CIVIL MONETARY PENALTIES

SEC. 1128A. (a) Any person (including an organization, agency, or other entity) that—

(1) presents or causes to be presented to an officer, employee, or agent of the United States, or of any department or agency thereof, or of any State agency (as defined in subsection [(h)(1)] *(i)(1)*, a claim (as defined in subsection [(h)(2)] *(i)(2)* that the Secretary determines is for a medical or other item or service—

(A) that the person knows or has reason to know was not provided as claimed, or

(B) payment for which may not be made under the program under which such claim was made, pursuant to a determination by the Secretary under section 1128, 1160(b), or 1862(d), or pursuant to a determination by the Secretary under section 1866(b)(2) with respect to which the Secretary has initiated termination proceedings; or

* * * * * * *

(b)(1) If a hospital or an eligible organization with a risk-sharing contract under section 186 knowingly makes a payment, directly or indirectly, to a physician as an inducement to reduce or limit services provided with respect to individuals who—

(A) are entitled to benefits under part A or part B of title XVIII,

(B) in the case of an eligible organization, are enrolled with the organization, and

(C) are under the direct care of the physician,

the hospital or organization shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $2,000 for each such individual with respect to whom the payment is made.

(2) Any physician who knowingly accepts receipt of a payment described in paragraph (1) shall be subject, in addition to any other penalties that may be prescribed by laws, to a civil money penalty of not more than $2,000 for individual described in such paragraph with respect to whom the payment is made.

[(b)**]** *(c)*(1) The Secretary may initiate a proceeding to determine whether to impose a civil money penalty or assessment under subsection (a) *or (b)* only as authorized by the Attorney General pursuant to procedures agreed upon by them.

(2) The Secretary shall not make a determination adverse to any person under subsection (a) *or (b)* until the person has been given written notice and an opportunity for the determination to be made on the record after a hearing at which the person is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses against the person.

[(c)**]** *(d)* In determining the amount or scope of any penalty or assessment imposed pursuant to subsection (a) *or (b)*, the Secretary shall take into account—

(1) the nature of claims and the circumstances under which they were presented,

(2) the degree of culpability, history of prior offenses, and financial condition of the person presenting the claims, and

(3) such other matters as justice may require.

[(d)**]** *(e)* Any person adversely affected by a determination of the Secretary under this section may obtain a review of such determination in the United States Court of Appeals for the circuit in which the person resides, or in which the claim was presented, by filing in such court (within sixty days following the date the person is notified of the Secretary's determination) a written petition requesting that the determination be modified or set aside. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the Court the record in the proceeding as provided in section 2112 of title 28, United States Code. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have the power to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, remanding for further consideration, or setting aside, in whole or in part, the determination of the Secretary and enforcing the same to the extent that such order is affirmed or modified. No objection that has not been urged before the Secretary shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Secretary with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Secretary, the court may order such additional evidence to be taken before the Secretary and to be made a part of the record. The Secretary may modify his findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and he shall file with the court such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and his recommendations, if any, for the modification or setting aside of his original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28, United States Code.

[(e)**]** *(f)* Civil money penalties and assessments imposed under this section may be compromised by the Secretary and may be recovered in a civil action in the name of the United States brought in United States district court for the district where the claim was presented, or where the claimant resides, as determined by the Secretary. Amounts recovered under this section shall be paid to the Secretary and disposed of as follows:

(1)(A) In the case of amounts recovered arising out of a claim under title XIX, there shall be paid to the State agency an amount equal to the State's share of the amount paid by the State agency for such claim.

(B) In the case of amounts recovered arising out of a claim under an allotment to a State under title V, there shall be paid to the State agency an amount equal to three-sevenths of the amount recovered.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under sections 1817 and 1841 shall be repaid to such trust funds.

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

The amount of such penalty or assessment, when finally determined, or the amount agreed upon in compromise, may be deducted from any sum then or later owing by the United States or a State agency to the person against whom the penalty or assessment has been assessed.

[(f)] *(g)* A determination by the Secretary to impose a penalty or assessment under section (a) *or (b)* shall be final upon the expiration of the sixty-day period referred to in subsection (d). Matters that were raised or that could have been raised in a hearing before the Secretary or in an appeal pursuant to subsection [(d)] *(e)* may not be raised as a defense to a civil action by the United States to collect a penalty or assessment assessed under this section.

[(g)] *(h)* Whenever the Secretary's determination to impose a penalty or assessment under subsection (a) *or (b)* becomes final, he shall notify the appropriate State or local medical or professional organization, and the appropriate utilization and quality control peer review organization, and the appropriate State or local licensing agency or organization (including the agency specified in sections 1864(a) and 1902(a)(33)) that such a penalty or assessment has become final and the reasons therefor.

[(h)] *(i)* For the purposes of this subsection:

(1) The term "State agency" means the agency established or designated to administer or supervise the administration of the State plan under title XIX of this Act or designated to administer the State's program under title V of this Act.

(2) The term "claim" means an application submitted by—

(A) a provider of services or other person, agency, or organization that furnishes an item or service under title XVIII of this Act, or

(B) a person, agency, or organization that furnishes an item or service for which medical assistance is provided under title XIX of this Act, or

(C) a person, agency, or organization that provides an item or service for which payment is made under title V of this Act or from an allotment to a State under such title,

to the United States or a State agency or agent thereof, for payment for health care services under title XVIII or XIX of this Act or for any item or service under title V of this Act.

(3) The term "item or service" includes (A) any particular item, device, medical supply, or service claimed to have been provided to a patient and listed in an itemized claim for payment, and (B) in the case of a claim based on costs, any entry in the cost report, books of account or other documents supporting such claim.

(4) The term "agency of the United States" includes any contractor acting as a fiscal intermediary, carrier, or fiscal agent or any other claims processing agent for a health insurance or medical services program under title XVIII or XIX of this Act.

* * * * * * *

DEFINITION OF UTILIZATION AND QUALITY CONTROL PEER REVIEW ORGANIZATION

SEC. 1152. The term "utilization and quality control peer review organization means an entity which—

(1)(A) is composed of a substantial number of the licensed doctors of medicine and osteopathy engaged in the practice of medicine or surgery in the area and who are representative of the practicing physicians in the area, designated by the Secretary under action section 1153, with respect to which the entity shall perform services under this part, or (B) has available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy engaged in the practice of medicine or surgery in such area to assure that adequate peer review of the services provided by the various medical specialities and subspecialties can be assured; [and]

(2) is able, in the judgment of the Secretary, to perform review functions required under section 1154 in a manner consistent with the efficient and effective administration of this part and to perform reviews of the pattern of quality of care in an area of medical practice where actual performance is measured against objective criteria which define acceptale and adequate practice; [and]

(3) has at least one individual who is a representative of consumers on its board of directors.

CONTRACTS WITH UTILIZATION AND QUALITY CONTROL PEER REVIEW ORGANIZATIONS

SEC. 1153. (a) * * *

* * * * * * *

(g) The Secretary shall provide that peer review organizations receive each month, on a timely basis, either directly from hospitals or through fiscal intermediaries data necessary to initiate the review process under section 1154(a) on a timely basis.

FUNCTIONS OF PEER REVIEW ORGANIZATIONS

SEC. 1154. (a) Any utilization and quality control peer review organization entering into a contract with the Secretary under this part must perform the following functions:

(1) * * *

(4) *(A)* The organization shall, after consultation with the Secretary, determine the types and kinds of cases (whether by type of health, care or diagnosis involved, or whether in terms of other relevant criteria relating to the provision of heath care services) with respect to which such organization will, in order to most effectively carry out the purposes of this part, exercise review authority under the contract. The organization shall notify the Secretary periodically with respect to such determinations. *Each peer review organization shall provide that a reasonable proportion of its activities are involved with reviewing, under paragraph (1)(B), the quality of services and that a reasonable allocation of such activities relating to quality of services is made among the different cases and settings (including inpatient hospital care, post-acute-care settings, ambulatory settings, health maintenance organizations, and competitive medical plans). In establishing such allocation, the organization shall consider (i) whether there is reason to believe that there is a particular need for review of particular cases or settings because of previuos problems regarding quality of care, (ii) the cost of such reviews and the likely yield of such reviews in*

terms of number and seriousness of quality of care problems likely to be discovered as a result of such reviews, and (iii) the availability and adequacy of alternative quality review and assurance mechanisms.

(B) The contract of each organization shall provide for the review of services (including both inpatient and outpatient services) provided by eligible organizations pursuant to a contract under section 1876 for the purpose of determining whether the quality of such services meets professional recongized standards of health care, including whether appropriate health care services have failed to be provided or have been provided in inappropriate settings. Under the contract the level of effort expended by the organization on reviews under this subparagraph shall be equivalent, on a per enrollee basis, to the level of effort expended by the organization on utilization and quality reviews performed by the organization with respect to individuals not enrolled with an eligible organization.

* * * * * * *

(13) Notwithstanding paragraph (4), the organization shall perform the review described in paragraph (1) with respect to early readmission cases to determine if the previous inpatient hospital services and the post-hospital services met professionally recognized standards of health care. Such reviews may be performed on a sample basis if the organization and the Secretary determine it to be appropriate. In this paragraph, an "early readmission case" is a case in which an individual, after discharge from a hospital, is readmitted to a hospital less than 31 days after the date of the most recent previous discharge.

(14) The organization shall conduct an appropriate review of all written complaints about the quality of services (for which payment may otherwise be made under title XVIII) not meeting professionally recognized standards of health care, if the complaint is filed with the organization by an individual entitled to benefits for such services under such title (or a person acting on the individuals's behalf). The organization shall inform the individual (or representative) of the organization's conclusions respecting the complaint and final disposition of the compliant. Before the organization concludes that the quality of services does not meet professionally recognized standards of health care, the organization must provide the practitioner or person concerned with reasonable notice and opportunity for discussion.

* * * * * * *

(d)(1) If—

(A) a hospital has determined that a patient no longer requires inpatient hospital care, and

(B) the attending physician has agreed with the hospital's determination,

the hospital may provide the patient (or the patient's representative) with a notice (meeting conditions prescribed by the Secretary under section 1879) of the determination.

(2) If—

(A) a hospital has determined that a patient no longer requires inpatient hospital care, but

(B) the attending physician has not agreed with the hospital's determination,

the hospital may request the appropriate peer review organization to review under subsection (a) the validity of the hospital's determination.

(3)(A) If a patient (or a patient's representative)—

(i) has received a notice under paragraph (1), and

(ii) requests the appropriate peer review organization to review the determination,

then, the organization shall conduct a review under subsection (a) of the validity of the hospital's determination and shall provide notice (by telephone and in writing) to the patient or representative and the hospital and attending physician involved of the results of the review. Such review shall be conducted regardless of whether or not the hospital will charge for continued hospital care or whether or not the patient will be liable for payment for such continued case.

(B) If a patient (or a patient's representative) requests a review under subparagraph (A) while the patient is still an inpatient in the hospital and not later than noon of the first working day after the date the patient receives the notice under paragraph (1), then—

(i) the hospital shall provide to the appropriate peer review organization the records required to review the determination by the close of business of such first working day, and

(ii) the peer review organization must provide the notice under subparagraph (A) by not later than one full working day after the date the organization has received the request and such records.

(4) If—

(A) a request is made under paragraph (3)(A) not later than noon of the first working day after the date the patient (or patient's representative) receives the notice under paragraph (1), and

(B) the conditions described in section 1879(a)(2) with respect to the patient or representative are met,

the hospital may not charge the patient for inpatient hospital services furnished before noon of the day after the date the patient or representative receives notice of the peer review organization's decision.

(5) In any review conducted under paragraph (2) or (3), the organization shall solicit the views of the patient involved (or the patient's representative).

(e) The Secretary, in consultation with appropriate experts, shall identify methods that would be available to assist peer review organizations (under subsection (a)(4)) in identifying those cases which are more likely than others to be associated with a quality of services which does not meet professionally recognized standards of health care.

* * * * * * *

PROHIBITION AGAINST DISCLOSURE OF INFORMATION

SEC. 1160. (a) * * *

(B) An organization having a contract with the Secretary under this part shall provide in accordance with procedures and safeguards established by the Secretary, data and information—

(1) which may identify specific providers or practitioners as may be necessary—

(A) * * *

(B) to assist appropriate Federal and State agencies recognized by the Secretary as having responsibility for identifying cases or patterns involving risks to the public health, which data and information shall be provided by the peer review organization to any such agency—

(i) at the discretion of the peer review organization, at the request of such agency relating to a specific case or pattern with respect to which such agency has made a finding, or has a reasonable belief, that there may be a substantial risk to the public health, or

(ii) upon a finding by, or the reasonable belief of, the peer review organization that there may be a substantial risk to the public health; **[**and**]**

[(C) to assist appropriate State agencies recognized by the Secretary as having responsibility for licensing or certification of providers or practitioners, which data and information shall be provided by the peer review organization to any such agency at the request of such agency relating to a specific case, but only to the extent that such data and information is required by the agency in carrying out a function which is within the jurisdiction of such agency under State law; and**]**

(C) to assist appropriate State agencies recognized by the Secretary as having responsibility for licensing or certification of providers or practitioners or to assist national accreditation bodies acting pursuant to section 1865 in accrediting providers for purposes of meeting the conditions described in title XVIII, which data and information shall be provided by the peer review organization to any such agency or body at the request of such agency or body relating to a specific case or to a possible pattern of substandard care, but only to the extent that such data and information are required by the agency or body in carrying out its respective function which is within the jurisdiction of the agency or body under State law or under section 1865; and

(D) to assist State ombudsmen and State protection and advocacy officials who the Secretary identifies as having responsibility for assuring the quality of care furnished by providers or practitioners, which data and information shall be provided by the peer review organization to any such ombudsman or official upon request relating to a specific provider or practitioner, but only to the extent that such data and information are related to the quality of care furnished by a provider or practitioner and only if the peer review organization determines that the data and information may reflect a failure in a substantial number of cases or a gross and flagrant failure in one or more instances to provide services of a quality which meets profes-

sionally recognized standards of health care, and that the data and information are needed by the ombudsman or official in carrying out official duties;

*   *   *   *   *   *   *

TITLE XVIII—HEALTH INSURANCE FOR THE AGED AND DISABLED

*   *   *   *   *   *   *

PART A—HOSPITAL INSURANCE BENEFITS FOR THE AGED AND DISABLED

*   *   *   *   *   *   *

PAYMENT TO PROVIDERS OF SERVICES

SEC. 1815. (a) *(1)* The Secretary shall periodically determine the amount which should be paid under this part to each provider of services with respect to the services furnished by it, and the provider of services shall be paid, at such time or times as the Secretary believes appropriate (but not less often than monthly) and prior to audit or settlement by the General Accounting Office, from the Federal Hospital Insurance Trust Fund, the amounts so determined, with necessary adjustments on account of previously made overpayments or underpayments; except that no such payments shall be made to any provider unless it has furnished such information as the Secretary may request in order to determine the amounts due such provider under this part for the period with respect to which the amounts are being paid or any prior period.

(2)(A) Except as provided in subparagraph (B), the Secretary shall provide payment under this part for inpatient hospital service furnished by a subsection (d) hospital (as defined in section 1886(d)(1)(B), and including a distinct psychiatric or rehabilitation unit of such a hospital) only on the basis of actual bills submitted by the hospital and not on a periodic interim payment basis.

(B) Subparagraph (A) shall not apply, and the Secretary shall permit payment on a periodic interim payment basis—

(i) to a subsection (d) hospital during the period it is—

(I) being paid additional amounts under section 1886(d)(5)(F) (relating to disproportionate share payments), or

(II) a sole community hospital (as defined in section 1886(d)(5)(C)(ii)); and

(ii) to a hospital which is receiving payment under a State hospital reimbursement system under section 1814(b)(3) or 1886(c), if payment on a periodic interim payment basis is an integral part of such reimbursement system.

(C) In the case of a subsection (d) hospital which has significant cash flow problems resulting from operations of its intermediary or from unusual circumstances of the hospital's operation, the Secretary shall make available appropriate accelerated payments.

*   *   *   *   *   *   *

USE OF PUBLIC AGENCIES OR PRIVATE ORGANIZATIONS TO FACILITATE PAYMENT TO PROVIDERS OF SERVICES

SEC. 1816. (a) * * *

* * * * * * *

(c) *(1)* An agreement with any agency or organization under this section may contain such terms and conditions as the Secretary finds necessary or appropriate, may provide for advances of funds to the agency or organization for the making of payments by it under subsection (a), and shall provide for payment of so much of the cost of administration of the agency or organization as is determined by the Secretary to be necessary and proper for carrying out the functions covered by the agreement. The Secretary shall provide that in determining the necessary and proper cost of administration, the Secretary shall, with respect to each agreement, take into account the amount that is reasonable and adequate to meet the costs which must be incurred by an efficiently and economically operated agency or organization in carrying out the terms of its agreement.

(2)(A) Each agreement under this section shall provide that, in cases of claims for which payment under this part is not made on a periodic interim payment basis under section 1815(a)—

(i) if payment is not made on or before the 22nd calendar day after the date on which a clean claim is received, interest on the claim shall be paid at the rate used for purposes of section 3902(a) of title 31, United States Code (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made;

(ii) the agency or organization shall notify the entity submitting the claim within 22 calendar days after the date a claim is received, of any defect, impropriety, or circumstance that prevents the claim from being treated as a clean claim;

(iii) if notice required under clause (ii) is not provided on a timely basis with respect to a claim and payment is subsequently made on the claim, interest on the amount determined to be payable shall be made (at the rate described in clause (i)) for the period beginning on the day after the required notice date and ending on the date on which payment is made or the date the notice is provided, whichever date is earlier; and

(iv) the agency or organization will be reimbursed for the amount of interest paid under this subparagraph from amounts made available for Federal administrative costs to carry out this part (other than such amounts as are made available for intermediary agreements under this section).

(B) In this paragraph, the term "clean claim" means a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this part.

* * * * * * *

PART B—SUPPLEMENTARY MEDICAL INSURANCE BENEFITS FOR THE AGED AND DISABLED

* * * * * * *

COVERAGE PERIOD

SEC. 1838. (a) * * *

* * * * * * *

(b) An individual's coverage period shall continue until his enrollment has been terminated—

(1) by the filing of notice that the individual no longers wishes to participate in the insurance program established by this part, or

(2) or nonpayment of premiums.

The termination of a coverage period under paragraph (1) shall (except as otherwise provided in section 1843(e)) take effect at the close of the calendar quarter [following the calendar quarter] in which the notice is filed. The termination of a coverage period under paragraph (2) shall take effect on a date determined under regulations, which may be determined so as to provide a grace period in which overdue premiums may be paid and coverage continued. The grace period determined under the preceding sentence shall not exceed 90 days; except that it may be extended to not to exceed 180 days in any case where the Secretary determines that there was good cause for failure to pay the overdue premiums within such 90-day period.

Where an individual who is deemed to have enrolled for medical insurance pursuant to section 1837(f) files a notice before the first day of the month in which his coverage period begins advising that he does not wish to be so enrolled, the termination of the coverage period resulting from such deemed enrollment shall take effect with the first day of the month the coverage would have been effective. Where an individual who is deemed enrolled for medical insurance benefits pursuant to section 1837(f) files a notice requesting termination of his deemed coverage in or after the month in which such coverage becomes effective, the termination of such coverage shall take effect at the close of the calendar quarter [following the calendar quarter] in which the notice is filed.

* * * * * * *

AMOUNTS OF PREMIUMS

SEC. 1839. (a)(1) * * *

* * * * * * *

(e)(1) Notwithstanding the provisions of subsection (a), the monthly premium for each individual enrolled under this part for each month after December 1983 and prior to January [1989] *1990* shall be an amount equal to 50 percent of the monthly actuarial rate for enrollees age 65 and over, as determined under subsection (a)(1) and applicable to such month.

(2) Any inceases in premium amounts taking effect prior to January [1989] *1990* by reason of paragraph (1) shall be taken into ac-

count for purposes of determining increases thereafter under subsection(a)(3).

(f)(1) If no cost-of-living increase becomes effective under section 215(i) in December of 1985, 1986, [or 1987], *1987, or 1988,* the monthly premium of each individual enrolled under this part for each month in the succeeding year shall (except as otherwise provided in subsection (b)) be the same as the monthly premium (disregarding subsection (b)) of the individual for such December.

(2) If paragraph (1) does not apply to the monthly premiums for 1986, 1987, [or 1988], *1988, or 1989,* if an individual is entitled to monthly benefits under section 202 or 223 for November and for December in the preceeding year, and if the monthly premium for that December and for the following January is deducted from those benefits under section 1840(a)(1), the monthly premium for that individual for that January and for each of the succeeding 11 months for which he is entitled to benefits under section 202 or 223 shall (except as otherwise provided in subsection (b)) be the greater of—

(A) the monthly premium amount determined under subsection (a)(2) for that January reduced by the amount (if any) necessary to make the monthly benefits under section 202 or 223 for that December after the deduction of the monthly premium (disregarding subsection (b)) for that January at least equal to the monthly benefits under section 202 or 223 for the preceding November after the deduction of the premium (disregarding subsection (b)) for that individual for that December, or

(B) the monthly premium (disregarding subsection (b)) for that individual for that December.

For purposes of this subsection, retroactive adjustments or payments and deductions on account of work shall not be taken into account in determining the monthly benefits to which an individual is entitled under section 202 or 223.

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USE OF CARRIERS FOR ADMINISTRATION OF BENEFITS

SEC. 1842. (a) * * *

* * * * * * *

(b)(1) * * *

* * * * * * *

(3) * * *

* * * * * * *

(E) will maintain such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of the information and reports under subparagraph (D) and otherwise to carry out the purposes of this part; [and]

(F) will take such action as may be necessary to assure that where payment under this part for a service rendered is on a charge basis, payment shall be determined on the basis of the charge that is determined in accordance with this section on the basis of customary and prevailing charge levels in effect at the time the service was rendered or, in the case of services rendered more than 12 months before the year (ending on September 30) in which the bill is submitted or request for payment is made, on the basis of such levels in effect for the 12-month period preceding such year;

(G) will provide such information to nonparticipating physicians as is available to enable the physicians to determine the maximum actual charges permitted under subsection (j)(1)(C); and

(H) if it makes determinations or payments with respect to physicians' services, will implement—

(i) programs to recruit and retain physicians as participating physicians in the area served by the carrier, including educational and outreach activities and the use of professional relations personnel to handle billing and other problems relating to payment of claims of participating physicians; and

(ii) programs to familiarize beneficiaries with the participating physician program and to assist such beneficiaries in locating participating physicians;

* * * * * * *

(4)(A)(i) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the 15-month period beginning July 1, 1984, the Secretary shall not set any level higher than the same level as was set for the 12-month period beginning July 1, 1983.

(ii)(I) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the 8-month period beginning May 1, 1986, by a physician who is not a participating physician (as defined in subsection (h)(1)) at the time of furnishing the services, the Secretary shall not set any level higher than the same level as was set for the 12-month period beginning July 1, 1983.

(II) In determining the prevailing charge levels under the fourth sentence of paragraph (3) for physicians' services furnished during the 8-month period beginning May 1, 1986, by a physician who is a participating physician (as defined in subsection (h)(1)) at the time of furnishing the services, the Secretary shall permit an additional one percentage point increase in the increase otherwise permitted under that sentence.

(III) In applying the percentage increase in the MEI for physicians' services furnished by a participating physician during each year after 1986, the Secretary shall provide a bonus of 1 percentage point in the percentage increase otherwise determined. Such a bonus for each year shall apply to physicians' services furnished only during the year and not in the calculation of payments for any subsequent year.

[(iii) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the 12-month period beginning on or after January 1, 1987, by a physician who is a participating physician (as defined in subsection (h)(1)) at the time of furnishing the services, the Secretary shall not set any level higher than the same level as was set for services furnished during the previous calendar year (without regard to clause (ii)(II)) for physicians who were participating physicians during that year.]

(iii) In determining the maximum allowable prevailing charges which may be recognized consistent with the index described in fourth sentence of paragraph (3) for physicians' services furnished on or after January 1, 1987, by participating and nonpaticipating physicians, respectively, the Secretary shall treat the maximum allowable prevailing charges recognized as of December 31, 1986, under such sentence with respect to participating and nonparticipating physicians, respectively, as having been justified by economic changes.

(iv) Beginning with 1987, the percentage increase in the MEI (as defined in subparagraph (E)(ii)) shall be the same for nonparticipating physicians as for participating physicians.

* * * * * * *

(C)[(i)] In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during periods beginning after September 30, 1985, the Secretary shall treat the level as set under subparagraph (A)(i) as having fully provided for the economic changes which would have been taken into account but for the limitations contained in subparagraph (A)(i).

[(ii) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the periods beginning after December 31, 1986, by a physician who was not a participating physician on that date, the Secretary shall treat the level as set under subparagraph (A)(ii) as having fully provided for the economic changes which would have been taken into account but for the limitations contained in subparagraph (A)(ii).]

(D)(i) In determining the customary charges for physicians services furnished during the 8-month period beginning May 1, 1986, or the 12-month period beginning January 1, 1987, by a physician who was not a participating physician (as defined in subsection (h)(1) on September 30, 1985, the Secretary shall not recognize increases in actual charges for services furnished during the 15-month period beginning on July 1, 1984, above the level of the physician's actual charges billed in the 3-month period ending on June 30, 1984.

(ii) In determining the customary charges for physicians' services furnished during the 12-month period beginning January 1, 1987, by a physician who is not a participating physician (as defined in subsection (h)(1)) on April 30, 1986, the Secretary shall not recognize increases in actual charges for services furnished during the 7-month period beginning on October 1, 1985, above the level of the physician's actual charges billed during the 3-month period ending on June 30, 1984.

(iii) In determining the customary charges for physicians' services furnished during the 12-month period beginning January 1, 1987, or January 1, 1988, by a physician who is not a participating physician (as defined in subsection (h)(1)) on December 31, 1986, the Secretary shall not recognize increases in actual charges for services furnished during the 8-month period beginning on May 1, 1986, above the level of the physician's actual charges billed during the 3-month period ending on June 30, 1984.

(iv) In determining the customary charges for physicians' services furnished on or after January 1, 1988, if a physician was a nonparticipating physician in a previous year (beginning with 1987), the Secretary shall not recognize any amount of such charges for services furnished during such previous year that exceed the limit on actual charges imposed under subsection (j)(1)(C).

(E) In this section:

(i) The term "participating physician" refers, with respect to the furnishing of services, to a physician who at the time of furnishing the services is a participating physician (under subsection (h)(1)), and the term "nonparticipating physician" refers, with respect to the furnishing of services, a physician who at the time of furnishing the services is not a participating physician.

(ii) The term "percentage increase in the MEI" means, with respect to physicians' services furnished in a year, the percentage increase in the medical economic index (referred to in the fourth sentence of paragraph (3)) applicable to such services furnished as of the first day of that year.

* * * * * * *

(8) The Secretary by regulation shall—

(A) describe the factors to be used *by carriers* in determining the cases (of particular items or services) in which the application of this subsection results in the determination of a reasonable charge that, by reason of its grossly excessive or grossly deficient amount, is not inherently reasonable, and

(B) provide in those cases for the factors that will be considered *by carriers* in establishing a reasonable charge that is realistic and equitable.

In the case of items and services other than physicians' services, a carrier shall only provide, in the process of calculating the prevailing charge for specific items and services, for not considering charges in specific instances in which the charges, in comparison with the charges for similar items and services, are grossly excessive or deficient. Nothing in this paragraph or this Act shall be construed as authorizing the Secretary, through regulations, guidelines, instructions, or otherwise, to require carriers to reduce payment amounts under this part for specific items and services for which the Secretary has made a specific determination that the payment amounts or charges are excessive. Nothing in this paragraph or this Act shall be construed as authorizing the Secretary, through regulations, guidelines, instructions, or otherwise, to require carriers to reduce payment amounts under this part for specific items and services for which the Secretary has made a specific determination that the payment amounts or charges are excessive.

* * * * * * *

(c)*(1)* Any contract entered into with a carrier under this section shall provide for advances of funds to the carrier for the making of payments by it under this part, and shall provide for payment of the cost of administration of the carrier, as determined by the Secretary to be necessary and proper for carrying out the functions covered by the contract. The Secretary shall provide that in determining a carrier's necessary and proper cost of administration, the Secretary shall, with respect to each contract, take into account the amount that is reasonable and adequate to meet the costs which must be incurred by an efficiently and economically operated carrier in carrying out the terms of its contract.

(2)(A) Each contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B), shall that, in cases of claims for which payment under this part is not made on a periodic interim payment basis described in section 1815(a)—

(i) if payment is not made on or before the 22nd calendar day (or the 11th calandar day the case of a claim for services furnished by a participating physician or supplier) after the date on which a clean claim is received, interest on the claim shall be paid at the rate used for purposes of section 3902(a) of title 31, United States Code (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made;

(ii) the carrier shall notify the entity submitting the claim, within 22 calendar days (or within 11 calendar days, in the case of a claim for services furnished by a participating physician or supplier) after the date the claim is received, of any defect, impropriety, or circumstance that prevents the claim from being treated as a clean claim;

(iii) if notice required under clause (ii) is not provided on a timely basis with respect to a claim and payment is subsequently made on the claim, interest on the amount determined to be payable shall be made (at the rate described in clause (i)) for the period beginning on the day after the required notice date and ending on the date on which payment is made or the date the notice is provided, whichever date is earlier; and

(iv) the carrier will be reimbursed for the amount of interest paid under this subparagraph from amounts made available for Federal administrative costs to carry out this part (other than such amounts as are made available for carrier contracts under this section).

(B) In this paragraph, the term "clean claim" means a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstances requiring special treatment that prevents timely payment from being made on the claim under this part.

* * * * * * *

(h)(1) Any physician or supplier may voluntarily enter into an agreement with the Secretary to become a participating physician or supplier. For purposes of this section, the term "participating physician or supplier" means a physician or supplier (excluding any provider of services) who, before [the beginning of any year beginning with 1984] *during the month of November before a year,* enters into an agreement with the Secretary which provides that such physician or supplier will accept payment under this part on an assignment related basis for all items and services furnished to individuals enrolled under this part during such year. In the case of a newly licensed physician or a physician who begins a practice in a new area, or in the case of a new supplier who begins a new business, or in such similar cases as the Secretary may specify, such physician or supplier may enter into such an agreement after the beginning of a year, for items and services furnished during the remainder of the year.

* * * * * * *

(4) At the beginning of each fiscal year the Secretary shall publish directories (for appropriate local geographic areas) containing the name, address, and specialty of all participating physicians and suppliers (as defined in subsection (h)(1)) for that area for that fiscal year. Each directory shall be organized to make the most useful presentation of the information (as determined by the Secretary) for individuals enrolled under this part. *Each participating physician directory for an area shall proivide an alphabetical listing of all participating physicians practicing in the area and an alphabetical listing by specialty and locality of such physicians.*

(5) The Secretary shall promptly notify individuals enrolled under this part of the publication of [such] *the* directories and shall make [such] *the appropriate area directory or* directories available in each district and branch office of the Social Security Administration, in the offices of carriers, and to senior citizens organizations.

(6) The Secretary shall provide that [the] directories shall be available for purchase by the public. The Secretary shall provide that each appropriate area directory is sent to each participating physician located in that area *and to each individual enrolled under this part and residing in that area and that an appropriate number of copies of each such directory is sent to hospitals located in the area. Such copies shall be sent free of charge.*

* * * * * * *

(j)(1) *(A)* In the case of a physician who is not a participating physician for items and services furnished during a portion of the 30-month period beginning July 1, 1984, the Secretary shall monitor the physician's actual charges to individuals enrolled under this part for physicians' services during that portion of that period. If such physician knowingly and willfully bills individuals enrolled under this part for actual charges in excess of such physician's actual charges for the calendar quarter beginning on April 1, 1984, the Secretary may apply sanctions against such physician in accordance with paragraph (2).

(B) During any period, on or after January 1, 1987, during which a physician is a nonparticipating physician, the Secretary shall monitor each such physician's actual charges for physicians' services furnished to individuals enrolled under this part. If such physician knowingly and willfully bills for such services actual charges in excess of the charges permitted under subparagraph (C), the Secretary may apply sanctions against such physician in accordance with paragraph (2).

(C) For physicians' services furnished by a physician to individuals enrolled under this part—

(i) during 1987, in the case of such services for which the physician—

(I) has actual charges for the calendar quarter beginning on April 1, 1984, the limit is the physician's actual charges for such services furnished during such quarter increased by the sum of the percentage increase in the MEI (as defined in subsection (b)(4)(E)) for 1987 and 1 percentage point, or

(II) has no actual charges for such calendar quarter, the limit is the 50th percentile of the customary charges (weighted by frequency of procedure) for the procedure performed by nonparticipating physicians in the locality during the 12-month period ending June 30, 1986, increased by the sum of the percentage increase in the MEI for 1987 and 1 percentage point; and

(ii) during a subsequent year, the limit is the maximum actual charges permitted under this subparagraph for the previous year increased by the percentage increase in the MEI for that subsequent year.

* * * * * * *

(2) Subject to paragraph (3), the sanctions which the Secretary may apply under paragraph (1) or subsection (k), *(l), or (m)* are—

(A) barring a physician from participation under the program under this title for a period not to exceed 5 years, in accordance with the procedures of paragraphs (2) and (3) of section 1862(d), or

(B) the imposition of civil monetary penalties and assessments, in the same manner as such penalties are authorized under section 1128A(a),

or both. No payment may be made under this title with respect to any item or service furnished by a physician during the period when he is barred from participation in the program under this title pursuant to this subsection.

(k)(1) If a physician knowingly and willfully *presents or causes to be presented a claim or* bills an individual enrolled under this part for charges for services as an assistant at surgery for which payment may not be made by reason of section 1862(a)(15), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).

(2) If a physician knowingly and willfully *presents or causes to be presented a claim or* bills an individual enrolled under this part for charges that includes a charge for an assistant at surgery for which payment may not be made by reason of section 1862(a)(15), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).

(l)(1)(A) Subject to subparagraph (C), if—

(i) a nonparticipating physician furnishes services to an individual enrolled for benefits under this part,

(ii) payment for such services is not accepted on an assignment related basis,

(iii) a carrier determines under this part or a peer review organization determines under part B of title XI that payment may not be made by reason of section 1862(a)(1), and

(iv) the physician has collected any amounts for such services, the physician shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts so collected.

(B) A refund under subparagraph (A) is considered to be on a timely basis only if—

(i) in the case of a physician who does not request reconsideration or seek appeal on a timely basis, the refund is made within 30 days after the date the physician receives a denial notice under paragraph (2), or

(ii) in the case such a reconsideration or appeal has been taken, the refund is made within 15 days after the date the physician receives notice of an adverse determination on reconsideration or appeal.

(C) Subparagraph (A) shall not apply to the furnishing of a service by a physician to an individual if—

(i) the physician did not know and could not reasonably have been expected to know that payment may not be made for the service by reason of section 1862(a)(1), or

(ii) before the service was provided, the individual was informed that payment under this part may not be made for the specific service and the individual has agreed to pay for that service.

(2) Each carrier with a contract in effect under this section with respect to physicians and each 1 per review organization with a contract under part B of title XI shall send any notice of denial of payment for physicians' services based on section 1862(a)(1) and for which payment is not requested on an assignment-related basis to the physician and the individual involved.

(3) If a physician knowingly and willfully fails to make refunds in violation of paragraph (1)(A), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).

(m)(1) In the case of a nonparticipating physician who—

(A) performs an elective surgical procedure for an individual enrolled for benefits under this part and for which the physician's actual charge is at least $500, and

(B) does not accept payment for such procedure on an assignment-related basis,

the physician must disclose to the individual, in writing and in a form approved by the Secretary, the physician's estimated actual charge for the procedure, the estimated approved charge under this part for the procedure, and the excess of the physician's actual charge over the approved charge.

(2) A physician who fails to make a disclosure required under paragraph (1) with respect to a procedure shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts collected for the procedure in excess of the charges recognized and approved under this part.

(3) If a physician knowingly and willfully fails to comply with the paragraph (2), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).

(4) The Secretary shall provide for such monitoring of requests for payment for physicians' services to which paragraph (1) applies as is necessary to assure compliance with paragraph (2).

* * * * * * *

PHYSICIAN PAYMENT REVIEW COMMISSION

SEC. 1845. (a)(1) * * *

(2) The Commission shall consist of [11] *13* individuals. Members of the Commission shall first be appointed no later than May 1, 1986, for a term of three years, except that the Director may provide initially for such shorter terms as will insure that (on a continuing basis) the terms of no more than four members expire in any one year.

* * * * * * *

PART C—MISCELLANEOUS PROVISIONS

DEFINITIONS OF SERVICES, INSTITUTIONS, ETC.

SEC. 1861. For purposes of this title—

Spell of Illness

(a) * * *

Hospital

(e) The term "hospital" (except for purposes of sections 1814(d), 1814(f), and 1815(b), subsection (a)(2) of this section, paragraph (7) of this subsection, and subsection (i) of this section) means an institution which—

(1) * * *

* * * * * * *

(6)*(A)* has in effect a hospital utilization review plan which meets the requirements of subsection (k) *and (B) has in place a discharge planning process that meets the requirements of subsection (ee);*

* * * * * * *

Reasonable Cost

(v)(1)(A) * * *

* * * * * * *

(R) Such regulations shall provide that costs respecting unsuccessful appeals (as defined by the Secretary) shall not be allowable as reasonable costs.

* * * * * * *

Discharge Planning Process

(ee)(1) A discharge planning process of a hospital shall be considered sufficient if it is applicable to services furnished by the hospital to individuals entitled to benefits under this title and if it meets

the guidelines and standards established by the Secretary under paragraph (2).

(2) The Secretary shall develop guidelines and standards for the discharge planning process in order to ensure a timely and smooth transition to the most appropriate type of and setting for post-hospital or rehabilitative care. The guidelines and standards shall include the following:

(A) The hospital must identify, at an early stage of hospitalization, those patients who are likely to suffer adverse health consequences upon discharge in the absence of adequate discharge planning.

(B) Hospitals must provide a discharge planning evaluation for patients identified under subparagraph (A) and for other patients upon the request of the patient, patient's representative, or patient's physician.

(C) Any discharge planning evaluation must be made on a timely basis to ensure that appropriate arrangements for post-hospital care will be made before discharge and to avoid unnecessary delays in discharge.

(D) A discharge planning evaluation must include an evaluation of a patient's likely need for appropriate post-hospital services and the availability of those services.

(E) The discharge planning evaluation must be included in the patient's medical record for use in establishing an appropriate discharge plan and the results of the evaluation must be discussed with the patient (or the patient's representative).

(F) Upon the request of a patient's physician, the hospital must arrange for the development and initial implementation of a discharge plan for the patient.

(G) Any discharge planning evaluation or discharge plan required under this paragraph must be developed by, or under the supervision of, a registered professional nurse, social worker, or other appropriately qualified personnel.

* * * * * * *

EFFECT OF ACCREDITATION

SEC. 1865. (a) Except as provided in subsection (b) and the second sentence of section 1863, if—

(1) an institution is accredited as a hospital by the Joint Commission on Accreditation of Hospitals, and

(2) such institution (if it is included within a survey described in section 1864(c)) authorizes the Commission to release to the Secretary upon his request (or such State agency as the Secretary may designate) a copy of the most current accreditation survey of such institution made by such Commission,

then, such institution shall be deemed to meet the requirements of the numbered paragraphs of section 1861(e); except—

(3) paragraph (6) thereof, and

(4) any standard, promulgated by the Secretary pursuant to paragraph (9) thereof, which is higher than the requirements prescribed for accreditation by such Commission.

If such Commission, as a condition for accreditation of a hospital, requires a utilization review plan (or imposes another requirement which serves substantially the same purpose), *requires a discharge planning process (or imposes another requirement which serves substantially the same purpose)*, or imposes a standard which the Secretary determines is at least equivalent to the standard promulgated by the Secretary as described in paragraph (4) of this subsection, the Secretary is authorized to find that all institutions so accredited by such Commission comply also with *clause (A) or (B) of* section 1861(e)(6) or the standard described in such paragraph (4), as the case may be. In addition, if the Secretary finds that accreditation of an entity by the American Osteopathic Association or any other national accreditation body provides reasonable assurance that any or all of the conditions of section 1832(a)(2)(F)(i), 1961(e), 1861(f), 1861(j), 1861(o), 1861(p)(4) (A) or (B), paragraphs (11) and (12) of section 1861(s), section 1861(aa)(2), 1861(cc)(2), or 1861(dd)(2), as the case may be, are met, he may, to the extent he deems it appropriate, treat such entity as meeting the condition or conditions with respect to which he made such finding. The Secretary may not disclose any accreditation survey made and released to him by the Joint Commission on Accreditation of Hospitals, the American Osteopathic Association, or any other national accreditation body, of an entity accredited by such body.

* * * * * * *

AGREEMENTS WITH PROVIDERS OF SERVICES

SEC. 1866. (a)(1) Any provider of services (except a fund designated for purposes of section 1814(g) and section 1835(e)) shall be qualified to participate under this title and shall be eligible for payments under this title if it files with the Secretary an agreement—

(A) * * *

* * * * * * *

(F)*(i)* in the case of hospitals which provide inpatient hospital services for which payment may be made under subsection (b), (c), or (d) of section 1886, to maintain an agreement with a professional standards review organization (if there is such an organization in existence in the area in which the hospital is located) or with a utilization and quality control peer review organization which has a contract with the Secretary under part B of title XI for the area in which the hospital is located, under which the organization will perform functions under that part with respect to the review of the validity of diagnostic information provided by such hospital, the completeness, adequacy, and quality of care provided, the appropriateness of admissions and discharges, and the appropriateness of care provided for which additional payments are sought under section 1886(d)(5), with respect to inpatient hospital services for which payment may be made under part A of this title (and for purposes of payment under this title, the cost of such agreement to the hospital shall be considered a cost incurred by such hospital in providing inpatient services under part A, and [(i)] *(I)* shall be paid directly by the Secretary to such organization on behalf of such hospital in accordance with a rate per review established by the Secretary, [(ii)] *(II)* shall be transferred from the Federal Hospital Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and **[**(iii)**]** *(III)* shall not be less in the aggregate for a fiscal year than the aggregate amount expended in fiscal year 1986 for direct and administrative costs (adjusted for inflation) of such reviews,

(ii) in the case of hospitals, skilled nursing facilities, and home health agencies, to maintain an agreement with a utilization and quality control peer review organization (which has a contract with the Secretary under part B of title XI for the area in which the hospital, facility, or agency is located) to perform the functions described in paragraph (4)(A);

* * * * * * *

(I) in the case of a hospital, to comply with the requirements of section 1867 to the extent applicable, **[**and**]**

(J) in the case of hospitals which provide inpatient hospital services for which payment may be made under this title, to be a participating provider of medical care under any health plan contracted for under section 1079 or 1086 of title 10, or under section 613 of title 38, United States Code, in accordance with admission practices, payment methodology, and amounts as prescribed under joint regulation issued by the Secretary and by the Secretaries of Defense and Transportation, in implementation of sections 1079 and 1086 of title 10, United States Code**[**.**]**,

[(I)**]***(K)* not to charge any individual or any other person for items or services for which payment under this title is denied under section 1154(a)(2) by reason of a determination under section 1154(a)(1)(B)**[**.**]**,

(L) in the case of hospitals, to provide to each individual who is entitled to benefits under part A (or to a legally responsible person or persons acting on the individual's behalf), at or about the time of the individual's admission as an inpatient to the hospital, a written statement (containing such language as the Secretary prescribes consistent with this paragraph) which explains—

(i) the individual's rights to benefits for inpatient hospital services and for post-hospital services under this title,

(ii) the circumstances under which such an individual will and will not be liable for charges for continued stay in the hospital,

(iii) the individual's right to appeal denials of benefits for continued inpatient hospital services, including the practical steps to initiate such an appeal, and

(iv) the individual's liability for payment for services if such a denial of benefits is upheld on appeal,

and which provides such additional information as the Secretary may specify, and

(M) in the case of hospitals—

(i) to make available to its patients the directory or directories of participating physicians (published under section 1942(h)(4)) for the area served by the hospital, and

(ii) if hospital personnel (including (staff of any emergency or outpatient department) refer a patient to a nonparticipating physician for further medical care on an outpatient basis, the personnel must inform the patient that the physician is a nonparticipating physician and, whenever practicable, must identify at least one qualified participating physician who is listed in such a directory and from whom the patient may receive the necessary services.

* * * * * * *

(4)(A) Under the agreement required under paragraph (1)(F)(ii), the peer review organization must perform functions (other than those covered under an agreement under paragraph (1)(F)(i)) under the third sentence of section 1154(a)(4)(A) and under section 1154(a)(14) with respect to services, furnished by the hospital, facility, or agency involved, for which payment may be made under this title.

(B) For purposes of payment under this title, the cost of such an agreement to the hospital, facility, or agency shall be considered a cost incurred by such hospital, facility, or agency in providing covered services under this title and shall be paid directly by the Secretary to the peer review organization on behalf of such hospital, facility, or agency in accordance with a schedule established by the Secretary.

(C) Such payments—

(i) shall be transferred in appropriate proportions from the Federal Hospital Insurance Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and

(ii) shall not be less in the aggregate for hospitals, facilities, and agencies for a fiscal year than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting the activities described in subparagraph (A) with respect to such hospitals, facilities, or agencies under part B of title XI.

* * * * * * *

EXAMINATION AND TREATMENT FOR EMERGENCY MEDICAL CONDITIONS AND WOMEN IN ACTIVE LABOR

SEC. 1867. (a) * * *

(e) DEFINITIONS.—In this section:

(1) * * *

(3) The term "participating hospital" means hospital that has entered into a provider agreement under section 1866 [and has, under the agreement, obligated itself to comply with the requirements of this section].

* * * * * * *

DETERMINATIONS; APPEALS

SEC. 1869. (a) The determination of whether an individual is entitled to benefits under part A or part B, and the determination of the amount of benefits under part A, *the amount of benefits with respect to home health services under part B, and any other determination with respect to a claim for benefits under part A* shall be made by the Secretary in accordance with regulations prescribed by him.

(b)(1) Any individual dissatisfied with any determination under subsection (a) as to—

(A) whether he meets the conditions of section 226 of this Act or section 103 of the Social Security Amendments of 1965, or

(B) whether he is eligible to enroll and has enrolled pursuant to the provisions of part B of this title or section 1818, **[**or**]**

(C) the amount of benefits under part A (including a determination where such amount is determined to be zero), *or*

(D) any other denial (other than under part B of title XI) of a claim for benefits under part A or a claim for benefits with respect to home health services under part B,

shall be entitled to a hearing thereon by the secretary to the same extent as is provided in section 205(b) and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g). *Sections 206(a), 1102, and 1871 shall not be construed as authorizing the Secretary to prohibit an individual from being represented under this subsection by a person that furnishes or supplies the individual, directly or indirectly, with services or items solely on the basis that the person furnishes or supplies the individual with such a service or item. Such a person cannot represent a beneficiary with respect to the issue described in section 1879(a)(2) unless the person has waived any rights for payment form the beneficiary with respect to the services or items involved in the appeal.*

* * * * * * *

PAYMENTS TO HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS

SEC. 1876. (a)(1)(A) The Secretary shall annually determine, and shall **[**publish**]** *announce (in a manner intended to provide notice to interested parties)* not later than September 7 before the calendar year concerned—

(i) a per capita rate of payment for each class of individuals who are enrolled under this section with an eligible organization which has entered into a risk-sharing contract and who are entitled to benefits under part A and enrolled under part B, and

(ii) a per capita rate of payment for each class of individuals who are so enrolled with such an organization and who are enrolled under part B only.

For purposes of this section, the term "risk-sharing contract" means a contract entered into under subsection (g) and the term "reasonable cost reimbursement contract" means a contract entered into under subsection (h).

* * * * * * *

(c)(1) * * *

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(3)(A) * * *

* * * * * * *

(E) Each eligible organization shall provide each enrollee, at the time of enrollment and not less frequently than annually thereafter, an explanation of the enrollee's rights under this section, including an explanation of—

(i) the enrollee's rights to benefits from the organization,

(ii) the restrictions on payments under this title for services furnished other than by or through the organization,

(iii) out-of-area coverage provided by the organization,

(iv) the organization's coverage of emergency services and urgently needed care, and

(v) appeal rights of enrollees.

* * * * * * *

(f)(1) * * *

(2) The Secretary may modify or waive the requirement imposed by paragraph (1) only ⟦if the Secretary determines that—

⟦(A) special circumstances warrant such modification or waiver, and

⟦(B) the eligible organization has taken and is making reasonable efforts to enroll individuals who are not entitled to benefits under this title or under a State plan approved under title XIX.⟧ *if more than 50 percent of the population of the area served by the organization consists of individuals who are entitled to benefits under this title or under a State plan approved under title XIX.*

(3) If the Secretary determines that an eligible organization has failed to comply with the requirements of this subsection, the Secretary may provide for the suspension of enrollment of individuals under this section with the organization after the date the Secretary notifies the organization of such noncompliance.

(g)(1) * * *

* * * * * * *

(6)(A) A risk-sharing contract under this section shall require the eligible organization to provide prompt payment (consistent with the provisions of sections 1816(c)(2) and 1842(c)(2)) of claims submitted for covered services and supplies furnished to individuals enrolled under this section, if the services or supplies are not furnished under a contract between the organization and the provider or supplier.

(B) In the case of an eligible organization which the Secretary determines, after notice and opportunity for a hearing, has failed to make payments of amounts in compliance with subparagraph (A), the Secretary may provide for direct payment of the amounts owed to providers and suppliers for such covered services furnished to individuals enrolled under this section under the contract. If the Secretary provides for such direct payments, the Secretary shall provide for an appropriate reduction in the amount of payments otherwise made to the organization under this section to reflect the amount of

the Secretary's payments (and his costs incurred in making such payments).

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(i)(1) * * *

(3) Each contract under this section—

(A) * * *

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(C) *(i)* shall require the organization to comply with subsections (a) and (c) of section 1318 of the Public Health Service Act relating to disclosure of certain financial information) and with the requirement of section 1301(c)(8) of such Act (relating to liability arrangements to protect members); **[and]**

(ii) shall require the organization to provide and supply information (described in section 1866(b)(2)(C)(ii)) in the manner such information is required to be provided or supplied under that section;

(iii) shall require the organization to notify the Secretary of loans and other special financial arrangements which are made between the organization and subcontractors, affiliates, and related parties; and

* * * * * * *

(6)(A) Any eligible organization with a risk-sharing contract under this section that fails substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under such contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals, is subject to a civil money penalty of not more than $2,000 for each such failure.

(B) The provisions of section 1128A (other than subsection (a)) shall apply to a civil money penalty under subparagraph (A) in the same manner as they apply to a civil money penalty under that section.

(7)(A) Each risk-sharing contract with an eligible organization under this section shall provide that the organization will maintain an agreement with a utilization and quality control peer review organization (which has a contract with the Secretary under part B of title XI for the area in which the eligible organization is located) under which the peer review organization will perform functions under section 1154(a)(4)(B) and section 1154(a)(14) (other than those performed under contracts described in section 1866(a)(1)(F)) with respect to services, furnished by the eligible organization, for which payment may be made under this title.

(B) For purposes of payment under this title, the cost of such agreement to the eligible organization shall be considered a cost incurred by a provider of services in providing covered services under this title and shall be paid directly by the Secretary to the peer review organization on behalf of such eligible organization in accordance with a schedule established by the Secretary.

(C) Such payments—

(i) shall be transferred in appropriate proportions from the Federal Hospital Insurance Trust Fund and from the Supple-

mentary Medical Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and

(ii) shall not be less in the aggregate for such organizations for a fiscal year than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting activities described in subparagraph (A) with respect to such eligible organizations under part B of title XI.

PENALTIES

SEC. 1877. (a) * * *

(b)(1) * * *

* * * * * * *

(3) Paragraphs (1) and (2) shall not apply to—

(A) a discount or other reduction in price obtained by a provider of services or other entity under this title if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under this title; **[**and**]**

(B) any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services.**[**.**]***; and*

(C) any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of providers of services if—

(i) the person has a written contract, with each such vendor and each such provider of services, which specifies the amount to be paid the person, which amount may be a fixed amount or a fixed percentage (not to exceed 3 percent) of the value of the purchases made by each such provider under the contract, and

(ii) the person discloses to each such provider the amount received from each such vendor with respect to purchases made by or on behalf of the provider.

* * * * * * *

LIMITATION ON LIABILITY OF BENEFICIARY WHERE MEDICARE CLAIMS ARE DISALLOWED

SEC. 1879. (a) Where—

(1) a determination is made that, by reason of section 1862(a)(1) or (9) *reason of a coverage denial described in subsection (g),* payment may not be made under part A or part B of this title for any expenses incurred for items or services furnished an individual by a provider of services or by another person pursuant to an assignment under section 1842(b)(3)(B)(ii), and

(2) both such individual and such provider of services or such other person, as the case may be, did not know, and could not reasonably have been expected to know, that payment would

not be made for such items or services under such part A or part B,

then to the extent permitted by this title, payment shall, notwithstanding such determination, be made for such items or services (and for such period of time as the Secretary finds will carry out the objectives of this title), as though section 1862(a)(1) and section 1862(a)(9) did not apply *and as though the coverage denial described in subsection (g) had not occurred.* In each such case the Secretary shall notify both such individual and such provider of services or such other person, as the case may be, of the conditions under which payment for such items or services was made and in the case of comparable situations arising thereafter with respect to such individual or such provider or such other person, each shall, by reason of such notice (or similar notices provided before the enactment of this section), be deemed to have knowledge that payment cannot be made for such items or services or reasonably comparable items or services. Any provider or other person furnishing items or services for which payment may not be made by reason of section 1862(a) (1) or (9) *or by reason of a coverage denial described in subsection (g)* shall be deemed to have knowledge that payment cannot be made for such items or services if the claim relating to such items or services involves a case, provider or other person furnishing services, procedure, or test, with respect to which such provider or other person has been notified by the Secretary (including notification by a utilization and quality control peer review organization) that a pattern of inappropriate utilization has occurred in the past, and such provider or other person has been allowed a reasonable time to correct such inappropriate utilization.

* * * * * * *

(c) No payments shall be made under this title in any cases in which the provisions of paragraph (1) of subsection (a) are met, but both the individual to whom the items or services were furnished and the provider of service or other person, as the case may be, who furnished the items or services knew, or could reasonably have been expected to know, that payment could not be made for items or services under part A or part B by reason of section 1862(a)(1) or (a)(9) *or by reason of a coverage denial described in subsection (g).*

* * * * * * *

(f)(1)(A) A skilled nursing facility which meets the applicable requirements of paragraphs (3) and (4) shall be presumed to meet the requirement of subsection (a)(2) with respect to denials of coverage by reason of section 1862(a) (1) or (9).

(B) A home health agency which meets the applicable requirements (i) of paragraphs (3) and (4) shall be presumed to meet the requirement of subsection (a)(2) with respect to denials of coverage by reason of section 1862(a) (1) or (9) or (ii) of paragraphs (3) and (5) shall be presumed to meet the requirement of subsection (a)(2) with respect to any coverage denial described in subsection (g).

(C) A hospice program which meets the applicable requirements of paragraphs (3) and (4) shall be presumed to meet the requirement of subsection (a)(2) with respect to denials of coverage by reason of section 1862(a) (1) or (9).

(2) The presumption of paragraph (1) with respect to specific services may be rebutted by actual or imputed knowledge of the facts described in subsection (a)(2), including any of the following:

(A) Notice by the fiscal intermediary of the fact that payment may not be made under this title with respect to the services.

(B) In the case of a skilled nursing facility, the committee or group responsible for the conduct of utilization review for the facility has informed the facility that payment may not be made under this title with respect to the services.

(C) It is clear and obvious that the provider should have known at the time the services were furnished that they were excluded from coverage.

(3) The requirements of this paragraph are as follows:

(A) The facility, agency, or program complies with requirements of the Secretary under this title respecting timely submittal of bills for payment and medical documentation.

(B) The facility, agency, or program has reasonable procedures to notify promptly each patient (and the patient's physician) where it is determined that a patient is being or will be furnished items or services which are excluded from coverage under this title.

(4) The requirement of this paragraph is that, on the basis of bills submitted during the previous quarter, the rate of denial of bills by reason of section 1862(a) (1) or (9) for—

(A) a skilled nursing facility does not exceed 5 percent, computed based on days of post-hospital extended care services billed,

(B) a home health agency does not exceed 2.5 percent, computed based on visits for home health services billed, or

(C) for a hospice program does not exceed 2.5 percent, computed based on visits for hospice care billed.

(5) The requirement of this paragraph is that, on the basis of bills submitted by a home health agency during the previous quarter, the rate of denial of bills for the agency by reason of a coverage denial described in subsection (g) does not exceed 2.5 percent, computed based on visits for home health services billed.

(6) The Secretary shall report annually to Congress—

(A) information on the frequency and distribution (by type of provider) of denials referred to in paragraphs (4) and (5), including—

(i) the reasons for such denials,

(ii) the extent to which payments were nonetheless made because of this section, and

(iii) the rate of reversals of such denials, and

(B) such other information as may be appropriate to evaluate the appropriateness of the percentage standards established under paragraphs (4) and (5).

(7) In this subsection, the term "fiscal intermediary" means, with respect to a skilled nursing facility, home health agency, or hospice program, an agency or organization with an agreement under section 1816 with respect to the facility, agency, or program.

(g) The coverage denial described in this subsection is, with respect to the provision of home health services to an individual, a

failure to meet the requirements of section 1814(a)(2)(C) or section 1835(a)(2)(A) in that the individual—

(1) is or was not confined to his home, or

(2) does or did not need skilled nursing care on an intermittent basis or physical, speech, or occupational therapy.

(h) The Secretary shall develop procedures to expedite the determination of whether initial claims submitted for post-hospital extended care services, home health services, and hospice care provided (or to be provided) to an individual may be reimbursed under this title, so as to minimize the time between (1) when the provider first provides the services to the individual, and (2) when the provider first receives notice of an individual determination on whether or not payment may be made under this title for some or all of the services provided the individual.

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MEDICARE COVERAGE FOR END STAGE RENAL DISEASE PATIENTS

SEC. 1881. (a) * * *

(b)(1) * * *

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(7) The Secretary shall provide by regulation for a method (or methods) for determining prospectively the amounts of payments to be made for dialysis services furnished by providers of services and renal dialysis facilities to individuals in a facility and to such individuals at home. Such method (or methods) shall provide for the prospective determination of a rate (or rates) for each mode of care based on a single composite weighted formula (which takes into account the mix of patients who receive dialysis services at a facility or at home and the relative costs of providing such services in such settings) for hospital-based facilities and such a single composite weighted formula for other renal dialysis facilities, or based on such other method or combination of methods which differentiate between hospital-based facilities and other renal dialysis facilities and which the Secretary determines, after detailed analysis, will more effectively encourage the more efficient delivery of dialysis services and will provide greater incentives for increased use of home dialysis than through the single composite weighted formulas. The Secretary shall provide for such exceptions to such methods as may be warranted by unusual circumstances (including the special circumstances of sole facilities located in isolated, rural areas). *Each application for such an exception for a sole facility located in an isolated, rural area shall be deemed to be approved as of the date of its filing unless the Secretary disapproves it by not later than 45 working days after the date the application is filed.* The Secretary may provide that such method will serve in lieu of any target reimbursement rate that would otherwise be established under paragraph (6). *The Secretary shall reduce the amount of each composite rate payment under this paragraph for each treatment by 50 cents (subject to such adjustments as may be required to reflect modes of dialysis other than hemodialysis) and provide for payment of such amount to the network administrative organization (designated under subsection (c)(1)(A) for the network area in which the*

treatment is provided) for its necessary and proper administrative costs incurred in carry out its responsibilities under subsection (c)(2).

* * * * * * *

[(c)(1)(A) Fo the purpose of assuring effective and efficient administration of the benefits provided under this section, the Secretary shall establish, in accordance with such criteria as he finds appropriate, renal disease network areas, such network organizations (including a coordinating council, an executive committee of such council, and a medical review board, for each network area) as he finds necessary to accomplish such purpose, and a national end stage renal disease medical information system. The Secretary may by regulations provide for such coordination of network planning and quality assurance activities and such exchange of data and information among agencies with responsibilities for health planning and quality assurance activities under Federal law as is consistent with the economical and efficient administration of this section and with the responsibilities established for network organizations under this section.]

(c)(1)(A)(i) For the purpose of assuring effective and efficient administration of the benefits provided under this section, the Secretary shall, in accordance with such criteria as he finds necessary to assure the performance of the responsibilities and functions specified in paragraph (2)—

(I) establish at least 17 end stage renal disease network areas, and

(II) for each such area, designate a network administrative organization which, in accordance with regulations of the Secretary, shall establish (aa) a network council of renal dialysis and transplant facilities located in the area and (bb) a medical review board which has a membership including at least one patient representative and physicians, nurses, and social workers engaged in treatment relating to end stage renal disease.

The Secretary shall publish in the Federal Register a description of the geographic area that he determines, after consulation with appropriate professional and patient organizations, constitutes each network area and the criteria on the basis of which such determination is made.

(ii)(I) In order to determine whether the Secretary should enter into, continue, or terminate an agreement with a network administrative organization designated for an area established under clause (i), the Secretary shall develop and publish in the Federal Register standards, criteria, and procedures to evaluate an applicant organization's capabilities to perform (and, in the case of an organization with which such an agreement is in effect, actual performance of) the responsibilities described in paragraph (2).

(II) An agreement with a network administrative organization may be terminated by the Secretary only if he finds, after applying such standards and criteria, that the organization has failed to perform its prescribed responsibilities effectively and efficiently. If such an agreement is to be terminated, the Secretary shall select a successor to the agreement on the basis of competitive bidding and in a manner that provides an orderly transition.

[(B) At least one patient representative shall serve as a member of each coordinating council and executive committee.]

(B) At least one patient representative shall serve as a member of each network council and each medical review board.

* * * * * * *

(2) The network organizations of each network shall be responsible, in addition to such other duties and functions as may be prescribed by the Secretary, for—

(A) encouraging, consistent with sound medical practice, the use of those treatment settings most compatible with the successful rehabilitation of the patient *and the participation of patients, providers of services, and renal disease facilities in vocational rehabilitation programs*;

(B) developing criteira and standards relating to the quality and appropriateness of patient care; and network goals with respect to the placement of patients in self-care settings and undergoing or preparing for transplantation *and with respect to working with patients, facilities, and providers in encouraging participation in vocational rehabilitation programs*;

* * * * * * *

(D) implementing a procedure for evaluating and resolving patient grievances;

(E) conducting on-site reviews of facilities and providers as necessary (as determined by a medical review board or the Secretary), utilizing standards of care established by the network organization to assure proper medical care;

(F) collecting, validating, and analyzing such data as are necessary to prepare the reports required by subparagraph (H) and subsection (g) and to assure the maintenance of the registry established under paragraph (7);

[(D)] (G) identifying facilities and providers that are not cooperating toward meeting network goals and assisting such facilities and providers in developing appropriate plans for correction *and reporting to the Secretary on facilities and providers that are not providing appropriate medical care;* and

[(E)] (H) submitting to annual report to the Secretary on July 1 of each year which shall include a full statement of the network's goals, data on the network's performance in meeting its goals (including data on the comparative performance of facilities and providers with respect to the identification and placement of suitable candidates in self-care settings and transplantation *and encouraging participation in vocational rehabilitation programs*), identification of those facilities that have consistently failed to cooperate with network goals, and recommendations with respect to the need for additional or alternative services or facilities in the network in order to meet the network goals, including self-dialysis training, transplantation, and organ procurement facilities.

(3) Where the Secretary determines, on the basis of the data contained in the network's annual report and such other relevant data as may be available to him, that a facility or provider has consistently failed to cooperate with network plans and goals *or to follow*

the recommendations of the medical review board, he may terminate or withhold certification of such facility or provider (for purposes of payment for services furnished to individuals with end stage renal disease) until he determines that such provider or facility is making reasonable and appropriate efforts to cooperate with the network's plans and goals. If the Secretary determines that the facility's or provider's failure to cooperate with network plans and goals does not jeopardize patient health or safety or justify termination of certification, he may instead, after reasonable notice to the provider or facility and to the public, impose such other sanctions as he determines to be appropriate, which sanctions may include denial of reimbursement with respect to some or all patients admitted to the facility after the date of notice to the facility or provider, and graduated reduction in reimbursement for all patients.

* * * * * * *

(6) It is the intent of the Congress that the maximum practical number of patients who are medically, socially, and psychologically suitable candidates for home dialysis or transplantation should be so treated *and that the maximum practical number of patients who are suitable candidates for vocational rehabilitation services be given access to such services and encouraged to return to gainful employment.* The Secretary shall consult with appropriate professional and network organizations and consider available evidence relating to developments in research, treatment methods, and technology for home dialysis and transplantation. The Secretary shall periodically submit to the Congress such legislative recommendations as the Secretary finds warranted on the basis of such consultation and evidence to further the national objectdive of maximizing the use of home dialysis and transplantation consistent with good medical practice.

(7) The Secretary shall establish a national end stage renal disease registry the purpose of which shall be to assemble and analyze the date reported by network organizations, transplant centers, and other sources on all end stage renal disease patients in a manner that will permit—

(A) the preparation of the annual report to the Congress required under subsection (g);

(B) an identification of the economic impact, cost-effectiveness, and medical efficacy of alternative modalities of treatment;

(C) an evaluation with respect to the most appropriate allocation of resources for the treatment and research into the cause of end stage renal disease;

(D) the determination of patient mortality and mordibity rates, and trends in such rates, and other indices of quality or care; and

(E) such other analyses relating to the treatment and management of end stage renal disease as will assist the Congress in evaluating the end stage renal disease program under this section.

The Secretary shall provide for such coordination of data collection activities, and such consolidation of existing end stage renal disease *data systems, as is necessary to achieve the purpose of such registry, shall determine the appropriate location of the registry, and shall provide for the appointment of a professional advisory group to assist the Secretary in the formulation of policies and procedures relevant to the management of such registry.*

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(f)(1) * * *

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[(7) The Secretary shall conduct a study of the medical appropriateness and safety of cleaning and reusing dialysis filters by home dialysis patients. In such cases in which the Secretary determines that such home cleaning and reuse of filters is a medically sound precedure, the Secretary shall conduct experiments to evaluate such home cleaning and reuse as a method of reducing the costs of the end stage renal disease program.]

(7)(A) The Secretary shall establish protocols on standards and conditions for the reuse of dialyzer filters for those facilities and providers which voluntarily elect to reuse such filters.

(B) The Secretary shall study and review the appropriateness of establishing protocols on standards and conditions for the reuse (where appropriate) of other dialysis supplies (such as blood lines, transducer filters, and dialyzer caps). If the Secretary determines that the establishment of such a protocol with respect to such a dialysis supply is appropriate, the Secretary may establish such a protocol.

(C) The Secretary shall incorporate protocols established under this paragraph into the requirements for facilities prescribed under subsection (b)(1)(A) and failure to follow such a protocol subjects such a facility to denial of participation in the program established under this section and to denial of payment for dialysis treatment not furnished in compliance with such a protocol.

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PAYMENT TO HOSPITALS FOR INPATIENT HOSPITAL SERVICES

SEC. 1886. (a)(1)(A) * * *

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(b)(1) * * *

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(3)(A) * * *

(B)(i) For purposes of subparagraph (A) for 12-month cost reporting periods beginning during a fiscal year and for purposes of subsection (d) for discharges occurring during a fiscal year, the "applicable percentage increase" shall be—

(I) for fiscal year 1986, ½ percent,

[(II) for fiscal years 1987 and 1988, a percentage determined by the Secretary pursuant to subsection (e)(4), but not to exceed the market basket percentage increase (as defined in clause (ii)), and]

(II) for fiscal year 1987, 1.3 percent, and for fiscal year 1988, the market basket percentage increase (as defined in clause (ii)) minus 2.0 percentage points, and

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(d)(1) * * *

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(2)(A) * * *

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(C) STANDARDIZING AMOUNTS.—The Secretary shall standardize the amount updated under subparagraph (B) for each hospital by—

(i) excluding an estimate of indirect medical education costs **[**(taking into account, for discharges occurring after September 30, 1986, the amendments made by section 9104(a) of the Medicare and Medicaid Budget Reconciliation Amendments of 1985)**]**,

(ii) adjusting for variations among hospitals by area in the average hospital wage level, *and*

(iii) adjusting for variations in case mix among hospitals**[**, and**]**.

[(iv) for discharges occurring on or after October 1, 1986, and before October 1, 1988, excluding an estimate of the additional payments to certain hospitals to be made under paragraph (5)(F).**]**

* * * * * * *

(3) The Secretary shall determine a national adjusted DRG prospective payment rate, for each inpatient hospital discharge in a fiscal year after fiscal year 1984 involving inpatient hospital services of a subsection (d) hospital in the United States, and shall determine a regional adjusted DRG prospective payment rate for such discharges in each region for which payment may be made under part A of this title. Each such rate shall be determined for hospitals located in urban or rural areas within the United States and within each such region, respectively, as follows:

(A) UPDATING PREVIOUS STANDARDIZED AMOUNTS.—The Secretary shall compute an average standardized amount for hospitals located in an urban area and for hospitals located in a rural area within the United States and for hospitals located in an urban area and for hospitals located in a rural area within each region, equal to the respective average standardized amount computed for the previous fiscal year under paragraph (2)(D) or under this subparagraph, increased for each of fiscal years 1985 **[**and 1986**]**, *1986, 1987, and 1988* by the applicable percentage increase under subsection (b)(3)(B), and adjusted for subsequent fiscal years in accordance with the final determination of the Secretary under subsection (e)(4), and adjusted to reflect the most recent case-mix data available. *If the formula under paragraph (5)(B) for determining payments for the indirect costs of medical education is changed for any fiscal year, the Secretary shall readjust the standardized amounts pre-*

viously determined for each hospital to take into account the changes in that formula.

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(C)(i) * * *

[(ii) REDUCING FOR SAVINGS FROM AMENDMENT TO INDIRECT TEACHING ADJUSTMENT FOR DISCHARGES AFTER SEPTEMBER 30, 1986.—For discharges occurring after September 30, 1986, the Secretary shall further reduce each of the average standardized amounts (in a proportion which takes into account the differing effects of the standardization effected under paragraph (2)(C)(i)) so as to provide for a reduction in the total of the payments (attributable to this paragraph) made for discharges occurring—

[(I) on or after October 1, 1986, and before October 1, 1988, of an amount equal to the estimated reduction in the payment amounts under paragraph (5)(B) that would have resulted from the enactment of the amendments made by section 9104 of the Medicare and Medicaid Budget Reconciliation Amendments of 1985 if the factor described in clause (ii)(II) of paragraph (5)(B) were applied for discharges occurring during such period instead of the factor described in clause (ii)(I) of that paragraph, and

[(II) on or after October 1, 1988, of an amount equal to the estimated reduction in the payment amounts under paragraph (5)(B) for those discharges that has resulted from the enactment of the amendments made by section 9104 of the Medicare and Medicaid Budget Reconciliation Amendments of 1985.]

(ii) REDUCING FOR SAVINGS FROM AMENDMENT TO INDIRECT TEACHING ADJUSTMENT FOR DISCHARGES AFTER SEPTEMBER 30, 1986.—The Secretary shall further reduce each of the average standardized amounts by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this subsection based on DRG prospective payment amounts which is the difference between (I) the sum of the additional payment amounts under paragraph (5)(B) (relating to indirect costs of medical education) if the indirect teaching adjustment factor were equal to 1.159r (as "r" is defined in paragraph (5)(B)(ii)) and (II) that sum using the factor specified in paragraph (5)(B)(ii)(II).

(iii) REDUCING FOR DISPROPORTIONATE SHARE PAYMENTS.—The Secretary shall further reduce each of the average standardized amounts by reducing the standardized amount for each hospital (as previously determined without regard to this clause) by a proportion equal to the proportion (established by the Secretary) of the amount of payment under this subsection based on DRG prospective payment amounts which are additional payments described in paragraph (5)(F) (relating to disporportionate share payments) for subsection (d) hospitals.

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(5)(A) * * *

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(C)(i) The Secretary shall provide for such exceptions and adjustments to the payment amounts established under this subsection *(other than under paragraph (9))* as the Secretary deems appropriate to take into account the special needs of regional and national referral centers (including those hospitals of 500 or more beds located in rural areas). A hospital which is classified as a rural hospital may appeal to the Secretary to be classified as a rural referral center under this clause on the basis of criteria (established by the Secretary) which shall allow the hospital to demonstrate that it should be so reclassified by reason of certain of its operating characteristics being similar to those of a typical urban hospital located in the same census region and which shall not require a rural osteopathic hospital to have more than 3,000 discharges in a year in order to be classified as a rural referral center.

Such characteristics may include wages, scope of services, service area, and the mix of medical specialties. The Secretary shall publish the criteria not later than August 17, 1984, for implementation by October 1, 1984. An appeal allowed under this clause must be submitted to the Secretary (in such form and manner as the Secretary may prescribe) during the quarter before the first quarter of the hospital's cost reporting period (or, in the case of a cost reporting period beginning during October 1984, during the first quarter of that period), and the Secretary must make a final determination with respect to such appeal within 60 days after the date the appeal was submitted. Any payment adjustments necessitated by a reclassification based upon the appeal shall be effective at the beginning of such cost reporting period.

(ii) With respect to a subsection (d) hospital which is a "sole community hospital", payment under paragraph (1)(A) for any cost reporting period or fiscal year beginning on or after October 1, 1984, shall be determined under the formula provided in clause (i) of that paragraph with the target and DRG percentages determined under paragraph (1)(C)(i) (except that any reference to paragraph (2) shall be deemed, for this purpose, a reference to paragraph (3)). In the case of a sole community hospital that experiences, in a cost reporting period (beginning on or after October 1, 1983, and before October 1, 1986) compared to the previous cost reporting period, a decrease of more than 5 percent in its total number of inpatient cases due to circumstances beyond its control, the Secretary shall provide for such adjustment to the payment amounts under this subsection *(other than under paragraph (9))* as may be necessary to fully compensate the hospital for the fixed costs it incurs in the period in providing inpatient hospital services, including the reasonable cost of maintaining necessary core staff and services. In the case of a sole community hospital which experiences, in any cost reporting period after the cost reporting period which was used as the base for determining the target amount for payments to such hospital under paragraph (1)(A)(i)(I), a significant increase in operating costs attributable to the addition of new inpatient facilities or services at such hospital (including the opening of a special care unit), the Secretary shall provide for such adjustment to the payment amounts under this subsection *(other than under paragraph (9))* for such cost reporting period and subsequent cost reporting periods as may be necessary to reasonably compensate such hospital for such increased costs. For purposes of this subparagraph, the term "sole community hospital" means a hospital that, by reason of factors such as isolated location, weather conditions, travel conditions, or absence of other hospitals (as determined by the Secretary), is the sole source of inpatient hospital services reasonably available to individuals in a geographical area who are entitled to benefits under part A.

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(F)(i) * * *

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(vi) In this subparagraph, the term "disproportionate patient percentage" means, with respect to a cost reporting period of a hospital, the sum of—

(I) the fraction (expressed as a percentage), the numerator of which is the number of such hospital's patient days for such period which were made up of patients who (for such days) were entitled to benefits under part A of this title and were entitled to **[**supplementary**]** *supplemental* security income benefits (excluding any State supplementation) under title XVI of this Act, and the denominator of which is the number of such hospital's patient days for such **[**fiscal year**]** *period* which were made up of patients who (for such days) were entitled to benefits under part A of this title, and

* * * * * * *

(7) There shall be no administrative or judical review under section 1878 or otherwise of—

(A) the determination of the requirement, or the proportional amount, of any adjustment effected pursuant to subsection (e)(1), **[**and**]**

(B) the establishment of diagnosis-related groups, of the methodology for the classification of discharges within such groups, and of the appropriate weighting factors thereof under paragraph (4)**[**.**]**, *and*

(C) the determination of a capital reduction percentage under subsection (g)(3).

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(9)(A) Notwithstanding section 1814(b) but subject to the provisions of section 1813, the amount of the payment with respect to the operating costs of inpatient hospital services of a subsection (d) Puerto Rico hospital for inpatient hospital discharges in a fiscal year beginning on or after October 1, 1986, is equal to the sum of—

(i) 75 percent of the Puerto Rico adjusted DRG prospective payment rate (determined under subparagraph (B) or (C)) for such discharges, and

(ii) 25 percent of the average of—

(I) the national adjusted DRG prospective payment rate (determined under paragraph (3)(D)) for hospitals located in an urban areas, and

(II) such rate for hospitals located in a rural areas,

for such discharges, adjusted in the manner provided in paragraph (3)(E) for different area wage levels.

As used in this section, the term "subsection (d) Puerto Rico hospital" means a hospital that is located in Puerto Rico and that would be a subsection (d) hospital (as defined in paragraph (1)(B)) if it were located in one of the fifty States.

(B) The Secretary shall determine a Puerto Rico adusted DRG prospective payment rate, for each inpatient hospital discharge in fiscal year 1987 involving inpatient hospital services of a subsection (d) Puerto Rico hospital for which payment may be made under part A of this title. Such rate shall be determined for such hospitals located in urban or rural areas within Puerto Rico, as follows:

(i) The Secretary shall determine the target amount (as defined in subsection (b)(3)(A) for the hospital for the cost reporting period beginning in fiscal year 1986 and increase such amount by the applicable percentage increase (as defined in subsection (b)(3)(B)) for fiscal year 1987.

(ii) The Secretary shall standardize the amount determined under clause (i) for each hospital by—

(I) excluding an estimate of indirect medical education costs,

(II) adjusting for variations among hospitals by area in the average hospital wage level, and

(III) adjusting for variations in case mix among hospitals.

(iii) The Secretary shall compute an average of the standardized amounts determined under clause (ii) for all hospitals located in an urban area and for all hospitals located in a rural area (as such terms are defined in paragraph (2)(D)).

(iv) The Secretary shall reduce the average standardized amount by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this paragraph which are additional payments described in subparagraph (D)(i) (relating to outlier payments) or in subparagraph (D)(v) (relating to disproportionate share payments) for subsection (d) Puerto Rico hospitals.

(v) For each discharge classified within a diagnosis-related group for hospitals located in an urban or rural area, respectively, the Secretary shall establish a Puerto Rico DRG prospective payment rate equal to the product of—

(I) the average standardized amount (computed under clause (iii) and reduced under clause (iv)) for hospitals located in an urban or rural area, respectively, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

(vi) The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the Puerto Rico DRG prospective payment rate computed under clause (v) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the Puerto Rican average hospital wage level.

(C) The Secretary shall determine a Puerto Rico adjusted DRG prospective payment rate, for each inpatient hospital discharge after fiscal year 1987 involving inpatient hospital services of a subsection

(d) Puerto Rico hospital for which payment may be made under part A of this title. Such rate shall be determined for hospitals located in urban or rural areas within Puerto Rico as follows:

(i) The Secretary shall compute an average standardized amount for hospitals located in an urban area and for hospitals located in a rural area equal to the respective average standardized amount computed for the previous fiscal year under subparagraph (B)(iii) or under this clause, increased for fiscal year 1988 by the applicable percentage increase under subsection (b)(3)(B), and adjusted for subsequent fiscal years in accordance with the final determination of the Secretary under subsection (e)(4), and adjusted to reflect the most recent casemix data available..

(ii) The Secretary shall reduce each of the average standardized amounts by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this paragraph which are additional payments described in subparagraph (D)(i) (relating to outlier payments) or in subparagraph (D)(v) (relating to disproportionate share payments) for subsection (d) Puerto Rico hospitals.

(iii) For each discharge classified within a diagnosis-related group for hospitals located in an urban or rural area, respectively, the Secretary shall establish a Puerto Rico DRG prospective payment rate equal to the product of—

(I) the average standardized amount (computed under clause (i) and reduced under clause (ii)) for hospitals located in an urban or rural area, respectively, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

(iv) The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the Puerto Rico DRG prospective payment rate computed under clause (iii) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the Puerto Rican average hospital wage level.

(D) The following provisions of paragraph (5) shall apply to subsection (d) Puerto Rico hospitals receiving payment under this paragraph in the same manner and to the extent as they apply to subsection (d) hospitals receiving payment under this subsections:

(i) Subparagraph (A) (relating to outlier payments), except that the total amount of additional payments made under this clause in a fiscal year may not be less than 5 percent nor more than 6 percent of the total payments projected as estimated to be made under this paragraph for discharges in that year.

(ii) Subparagraph (B) (relating to payments for indirect medical education costs), except that for this purpose the sum of the amount determined under subparagraph (A) of this paragraph and the amount paid to the hospital under clause (i) of this subparagraph shall be substituted for the sume referred to in paragraph (5)(B)(i)(I).

(iii) Subparagraph (C)(iii) (relating to exceptions and adjustments).

(iv) Subparagraph (E) (relating to payments for costs of certified registered nurse anesthetists).

(v) Subparagraph (F) (relating to disproportionate share payments), except that for this purpose the sum described in clause (ii) of this subparagraph shall be substituted for the sum referred to in paragraph (5)(F)(ii)(I).

(e)(1) * * *

* * * * * * *

(4) Taking into consideration the recommendations of the Commission, the Secretary shall [determine for each fiscal year (beginning with fiscal year 1987)] *recommend for fiscal year 1988 an appropriate change factor for inpatient hospital services for discharges in that fiscal year and shall determine for each subsequent fiscal year* the percentage change which will apply for purposes of this section as the applicable percentage increase (otherwise described in subsection (b)(3)(B)) for discharges in that fiscal year, and which will take into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality *and shall determine for each fiscal year the capital reduction percentage which should be effected under subsection (g)(3) for that fiscal year. The percentage change for subsection (d) hospitals and subsection (d) Puerto Rico hospitals may be different from that for other hospitals and may vary among such other hospitals.*

(5) The Secretary shall cause to have published in the Federal Register, not later than—

(A) the [June 1 before each fiscal year (beginning with fiscal year 1986)] *April 1 before fiscal year 1988 and the June 1 before each subsequent fiscal year,* the Secretary's proposed *recommendation or* determination under paragraph (4) for that fiscal year for public comment, and

(B) the September 1 before such fiscal year after such consideration of public comment on the proposal as is feasible in the time available, the Secretary's final *recommendation or* determination under such paragraph for that year.

The Secretary shall include in the publication referred to in subparagraph (A) for a fiscal year the report of the Commission's recommendations submitted under paragraph (3) for that fiscal year.

* * * * * * *

(g)(1) * * *

* * * * * * *

(3)(A) Notwithstanding section 1861(v)(1), in determining the amount of the hospital capital payments (as defined in subparagraph (D)), the Secretary shall provide for a reduction by such percentage (in this section referred to as the "capital reduction percentage") in such payments as is necessary to provide that the aggregate amount of hospital capital payments attributable to portions of hospital cost reporting periods occurring in fiscal year 1987, in fiscal year 1988, and in fiscal year 1989, does not exceed 110 percent, 120 percent, and 130 percent, respectively, of the aggregate amount of such payments attributable to portions of hospital cost reporting periods occurring in fiscal year 1986, adjusted in accordance with subparagraph (C).

(B) The Secretary shall determine the capital reduction percentage based upon the best information available before the beginning of the fiscal year involved and interim and final payments shall be made on the basis of such percentage. Such percentage shall not be subject to change after the date it is promulgated in final form.

(C) In computing the hospital capital payments attributable to portions of cost reporting periods occurring in fiscal year 1986 in the computing the limitation on hospital capital payments under subparagraph (A) attributable to portions of cost reporting periods occurring in—

(i) fiscal year 1987, there shall be excluded 25 percent,
(ii) fiscal year 1988, there shall be excluded 50 percent,
(iii) fiscal year 1989, there shall be excluded 75 percent,

of the amount of the hospital capital payments (attributable to portions of cost reporting periods occurring in fiscal year 1986) that are attributable to a return on equity capital.

(D) In this paragraph, the term "hospital capital payments" means the payments that may be made under part A of this title with respect to the allowable capital-related costs (as defined by the Secretary) of inpatient hospital services for subsection (d) hospitals and subsection (d) Puerto Rico hospitals.

(h) PAYMENTS FOR DIRECT GRADUATE MEDICAL EDUCATION COSTS.—

(1) * * *

* * * * * * *

(4) DETERMINATION OF FULL-TIME-EQUIVALENT RESIDENTS.—

(A) * * *

* * * * * * *

(E) FOREIGN MEDICAL GRADUATES REQUIRED TO PASS FMGEMS EXAMINATION.—

(i) * * *

(ii) TRANSITION FOR CURRENT FMGS.—On or after July 1, 1986, but before July 1, 1987, in the case of a foreign medical graduate who—

(I) has served as a resident before July 1, 1986, and is serving as a resident after that date, but
(II) has not passed the FMGEMS examination or a previous examination of the Educational Commission for Foreign Medical Graduates before July 1, 1986.

the individual shall be counted as a resident at a rate equal to one-half of the rate at which the individual would otherwise be counted.

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PAYMENT TO SKILLED NURSING FACILITIES FOR ROUTINE SERVICES COSTS

SEC. 1888. (a) * * *

* * * * * * *

(d)(1) Any skilled nursing facility may choose to be paid under this subsection on the basis of a prospective payment for all routine service costs (and capital-related costs) of extended care services provided in a [fiscal year] *cost reporting period* if such facility had, in the preceding [fiscal year] *cost reporting period,* fewer than 1,500 patient days with respect to which payments were made under this title. Such prospective payment shall be in lieu of payments which would otherwise be made for routine service costs pursuant to section 1861(v) and subsections (a) through (c) of this section and capital-related costs pursuant to section 1861(v). This subsection shall not apply to a facility for any [fiscal year] *cost reporting period,* immediately following a [fiscal year] *cost reporting period,* in which such facility had 1,500 or more patient days with respect to which payments were made under this title, without regard to whether payments were made under this subsection during such preceding [fiscal year] *cost reporting period,*.

* * * * * * *

(4) The Secreary shall establish the prospective payment amounts for [each fiscal year] *cost reporting periods begining in a fiscal year* at least 90 days prior to the beginning of such fiscal year, on the basis of the most recent date available for a 12-month period. A skilled nursing facility must notify the Secretary of its intention to be paid pursuant to this subsection for a [fiscal year within 60 days after the Secretary establishes the final prospective payment amounts for such fiscal year] *cost reporting period no later than 30 days before the beginning of that period.*

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CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

TITLE IX—MEDICARE, MEDICAID, AND MATERNAL AND CHILD HEALTH PROGRAMS

* * * * * * *

SUBTITLE A—MEDICARE

PART 1—PROVISIONS RELATING TO PART A OF MEDICARE

* * * * * * *

Subpart B—Miscellaneous Provisions

* * * * * * *

SEC. 9126. ACCESS TO SKILLED NURSING FACILITIES.

(a) * * *

[(c) REINSTATEMENT OF WAIVER OF LIABILITY PRESUMPTION.—The Secretary of Health and Human Services shall, for purposes of determining whether payments to a skilled nursing facility should be denied pursuant to section 1862(a)(1)(A) of the Social Security Act, apply the same presumption of compliance (5 percent) as in effect under regulations as of July 1, 1985. Such presumption shall apply for the 30-month period beginning with the first month beginning after the date of the enactment of this Act.]

(d) EFFECTIVE DATES.—(1) The amendment made by subsection (a) shall apply to [fiscal years] *cost reporting periods* beginning on or after October 1, 1986.

* * * * * * *

SEC. 9127. ADDITIONAL MEMBERS OF PROSPECTIVE PAYMENT ASSESSMENT COMMISSION.

(a) * * *

(b) APPOINTMENTS.—The Director of the Congressional Office of Technology Assessment shall appoint the two additional members of the Prospective Payment Assessment Commission, as required by the amendment made by subsection (a), no later than 60 days after the date of the enactment of this Act, for terms of three years, *except that the Director may provide intitially for such terms as will insure that (on a continuing basis) the terms of no more than eight members will expire in any one year.*

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PART 2—PROVISIONS RELATING TO PARTS A AND B OF MEDICARE

Subpart A—Payment-Related Provisions

* * * * * * *

SEC. 9202. PAYMENTS TO HOSPITALS FOR DIRECT COSTS OF MEDICAL EDUCATION.

(a) * * *

* * * * * * *

(j) SPECIAL TREATMENT OF STATES FORMERLY UNDER WAIVER.—In the case of a hospital in a State that has had a waiver approved under section 1886(c) of the Social Security Act *or section 402 of the Social Security Amendents of 1967,* for cost reporting periods beginning on or after January 1, 1986, if the waiver is terminated—

(1) the Secretary of Health and Human Services shall permit the hospital to change the method by which it allocates administrative and general costs to the direct medical education cost centers to the method specified in the medicare cost report;

(2) the Secretary may make appropriate adjustments in the regional adjusted DRG prospective payment rate (for the region in which the State is located), based on the assumption that all teaching hospitals in the State use the medicare cost report; and

(3) the Secretary shall adjust the hospital-specific portion of payment under section 1886(d) of such Act for any such hospital that actually chooses to use the medicare cost report.

The Secretary shall implement this subsection based on the best available data.

* * * * * * *

[SEC. 9205. HOME HEALTH WAIVER OF LIABILITY.

[The Secretary of Health and Human Services shall, for purposes of determining whether payments to a home health agency should be denied pursuant to section 1862(a)(1)(A) of the Social Security Act, apply a presumption of compliance (2.5 percent) in the same manner as under the regulations in effect as of July 1, 1985. Such presumption shall apply until 12 months after the date on which ten regional intermediaries have commenced operations to service home health agencies, as required under section 1816(e)(4) of the Social Security Act.]

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Subpart B—Other Provisions

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SEC. 9221. CONTINUATION OF "ACCESS: MEDICARE" DEMONSTRATION PROJECT.

(a) Approval of Application.—The Secretary of Health and Human Services shall approve any application for a waiver of any requirement of titles XVIII and XIX of the Social Security Act necessary to provide for the continuation, through [September 30, 1986] *July 31, 1987,* of the "Access: Medicare" demonstration project carried out pursuant to section 222 of the Social Security Amendments of 1972 and section 402(a) of the Social Security Amendments of 1967 by Monroe County Long Term Care Program, Inc.

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PARTS 3—PROVISIONS RELATING TO PART B OF MEDICARE

Subpart A—Payment-Related Provisions

SEC. 9301. MEDICARE PHYSICIAN PAYMENT PROVISIONS.

(a) * * *

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(c) Incentives for Participating Physician Program.—

(1) * * *

* * * * * * *

(5) Effective date.—Section [1842(b)(7)] *1842(h)(7)* of the Social Security Act, as added by paragraph (4) of this subsection, shall apply to explanations of benefits provided on or after such date (not later than October 1, 1986) as the Secretary of Health and Human Services shall specify.

* * * * * * *

SECTION 603 OF THE SOCIAL SECURITY AMENDMENTS OF 1983

REPORTS, EXPERIMENTS, AND DEMONSTRATION PROJECTS

Sec. 603. (a)(1) * * *

(2)(A) The Secretary shall study and report annually to the Congress at the end of each year (beginning with 1984 and ending with [1987] *1989* on the impact of the payment methodology under section 1886(d) of the Social Security Act during the previous year, on classes of hospitals, beneficiaries, and other payors for inpatient hospital services, and other providers, and, in particular, on the impact of computing DRG prospective payment rates by census division, rather than exclusively on a national basis. Each such report shall include such recommendations for such changes in legislation as the Secretary deems appropriate.

* * * * * * *

(E) In each annual report to Congress under subparagraph (A), the Secretary shall include—

(i) an evaluation of the adequacy of the procedures for assuring quality of post-hospital services furnished under title XVIII of the Social Security Act,

(ii) an assessment of problems that have prevented groups of medicare beneficiaries (including those eligible for medical assistance under title XIX of such Act) from receiving appropriate post-hospital services covered under such title, and

(iii) information on reconsiderations and appeals taken under title XVIII of such Act with respect to payment for post-hospital services.

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DEFICIT REDUCTION ACT OF 1984

TITLE II—CIVIL SERVICE AND MILITARY RETIREMENT PROGRAMS

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SUBTITLE A—MEDICARE AMENDMENTS

PART I—REIMBURSEMENT AND BENEFIT CHANGES

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PAYMENT FOR SERVICES OF A NURSE ANESTHETIST

SEC. 2312. (a) * * *

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(c) The amendments made by subsections (a) and (b) shall apply to cost reporting periods beginning on or after October 1, 1984, and before October 1, [1987.] *1988.*

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CONTRACTS FOR MEDICARE CLAIMS PROCESSING

SEC. 2326. (a) During each [of the fiscal years 1985 and 1986,] *fisal year (beginning with fiscal year 1985 and ending with fiscal year 1989),* the Secretary of Health and Human Services may enter into not more than two agreements under section 1816 of the Social Security Act, and not more than two contracts under section 1842 of such Act, on the basis of competitive bidding, *or fixed price,* without regard to the nominating process under section 1816(a) of such Act during the term of the agreement. Such procedure may be used only for the purpose of replacing an agency or organization or carrier which over a period of time has been in the lowest 20th percentile of agencies and organizations or carriers having agreements or contracts under the respective section, as measured by the Secretary's cost and performance criteria. Any agency or organization or carrier selected on the basis of competitive bidding *or fixed price* must perform all of the duties listed in section 1816(a)(1) of such Act, or the duties listed in paragraphs (1) through (4) of section 1842(a) of such Act, as the case may be, and must be a health insuring organization (as determined by the Secretary).

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Internal Revenue Code of 1954

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CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter B—Computation of Taxable Income

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PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

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SEC. 162. TRADE OR BUSINESS EXPENSES.

(a) IN GENERAL.—* * *

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(k) CONTINUATION COVERAGE REQUIREMENTS OF GROUP HEALTH PLANS.—

(1) IN GENERAL.—For purposes of subsection (i)(2) and section 106(b)(1), a group health plan meets the requirements of this subsection only if each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event is entitled to elect, within the election period, continuation coverage under the plan.

(2) CONTINUATION COVERAGE.—For purposes of paragraph (1), the term "continuation coverage" means coverage under the plan which meets the following requirements:

(A) TYPE OF BENEFIT COVERAGE.—The coverage must consist of coverage which, as of the time the coverage is being provided, is identical to the coverage provided under the plan to similarly situated beneficiaries under the plan with respect to whom a qualifying even has not occurred. *If coverage is modified under the plan for similarly situated beneficiaries, such coverage shall also be modified in the same manner for all qualified beneficiaries covered under the plan.*

(B) PERIOD OF COVERAGE.—The coverage must extend for at least the period beginning on the date of the qualifying event and ending not earlier than the earliest of the following:

(i) MAXIMUM PERIOD.—In the case of—

(I) a qualifying event described in paragraph (3)(B) (relating to terminations and reduced hours), the date which is 18 months after the date of the qualifying even,[and]

(II) a qualifying event described in paragraph (3)(F) (relating to bankruptcy proceedings), the date of the death of the covered employee or qualified beneficiary (described in paragraph (7)(B)(iii)(III)), or in the case of the surviving spouse or dependent children of the covered employee, 36 months after the date of the death of the covered employee, and

[(II)] *(III)* any qualifying event not described in subclause [(I.)] *(I) or (II),* the date which is 36 months after the date of the qualifying even [.]*; except that in the case of a qualified beneficiary with respect to whom more than one qualifying event occurs, the date may be extended under this clause but in no case may the coverage period with respect to such events (other than the period applicable to a qualifying event described in paragraph (3)(F)) exceed a 36-month period for such qualified beneficiary.*

(ii) END OF PLAN.—The date on which the employer ceases to provide any group health plan to any employee.

(iii) FAILURE TO PAY PREMIUM.—The date on which coverage ceases under the plan by reason of a failure to make timely payment of any premium required under the plan with respect to the qualified beneficiary. *Payment shall be considered to be timely if made within 30 days of the date due or within such longer period as applies to or under the plan.*

(iv) REEMPLOYMENT OR MEDICARE ELIGIBILITY.—The date on which the qualified beneficiary first becomes, after the date of the election—

(I) a covered employee under any other group health plan, or

(II) *in the case of a qualified beneficiary other than a qualified beneficiary described in paragraph (7)(B)(iii),* entitled to benefits under title XVIII of the the Social Security Act.

* * * * * * *

(3) QUALIFYING EVENT.—For purposes of this subsection, the term "qualifying event" means, with respect to any covered employee, any of the following events which, but for the continuation coverage required under this subsection, would result in the loss of coverage of a qualified beneficiary:

(A) The death of the covered employee.

(B) The termination (other than by reason of such employee's gross misconduct), or reduction of hours, of the covered employee's employment.

(C) The divorce or legal separation of the covered employee from the employee's spouse.

(D) The covered employee becoming entitled to benefits under title XVIII of the the Social Security Act.

(E) A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.

(F) A proceeding in a case under title 11, United States Code, commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

In the case of an event described in subparagraph (F), a loss of coverage includes a substantial elimination of coverage with respect to a qualified beneficiary described in paragraph (7)(B)(iii) within one year before or after the date of commencement of the proceeding.

* * * * * * *

(5) Election.—For purposes of this subsection—

(A) Election period.—The term "election period" means the period which—

(i) begins not later than the date on which coverage terminates under the plan by reason of a qualifying event.

(ii) is of at least 60 days' duration, and

(iii) ends not earlier than 60 days after the later of—

(I) the date described in clause (i), or

(II) in the case of any qualified beneficiary who receives notice under paragraph (6((D), the date of such notice.

(B) Effect of election on other beneficiaries.—Except as otherwise specified in an election, any election by a qualified beneficiary described in clause (i)(I) or (ii) of paragraph (7)(B) shall be deemed to include an election of continuation coverage on behalf of any other qualified beneficiary who would lose coverage under the plan by reason of the qualifying event.

(c) Right to individual election.—Notwithstanding subparagraph (B), each qualified beneficiary is entitled to make a separate election with respect to continuation coverage for that beneficiary and, if there is a choice of type of coverage under the plan, to make a separate selection among such types of coverage.

* * * * * * *

(6) Notice requirements.—In accordance with regulations prescribed by the Secretary—

(A) the group health plan shall provide, at the time of commencement of coverage under the plan, written notice to each covered employee and spouse of the employee (if any) of the rights provided under this subsection.

(B) the employer of an employee under a plan must notify the plan administrator of a qualifying event described in subparagraph (A), (B), or (D) of paragraph (3) with respect to such employee within 30 days of the date of qualifying event.

(C) each covered employee or qualified beneficiary is responsible for notifying the plan administrator of the occurrence of any qualifying event described in subparagraph (C) of (E) of paragraph (3) *within 60 days of the date of the qualifying event* and

* * * * * * *

(7) DEFINITIONS.—For purposes of this subsection—

(A) COVERED EMPLOYEE.—The term "covered employee" means an individual who is (or was) provided coverage under a group health plan by virtue of the individual's employment or previous employment with an employer.

(B) QUALIFIED BENEFICIARY—

(i) * * *

* * * * * * *

(iii) SPECIAL RULE FOR RETIREES AND WIDOMS.—In the case of a qualifiying event described in paragraph (3)(F), the term "qualified beneficiary" includes a covered employee who had retired on or before the date of substantial elimination of coverage and any other individual who, on the day before such qualifying event, is a beneficiary under the plan—

(I) as the spouse of the covered employee,

(II) as the dependent child of the employee, or

(III) as the surviving spouse of the covered employee.

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Subtitle C—Employment Taxes and Collection of Income Tax at Source

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CHAPTER 21—FEDERAL INSURANCE CONTRIBUTIONS ACT

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Subchapter C—General Provisions

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SEC. 3121. DEFINITIONS.

(a) * * *

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(u) APPLICATION OF HOSPITAL INSURANCE TAX TO FEDERAL, STATE, AND LOCAL EMPLOYMENT.—

(1) FEDERAL EMPLOYMENT.—For purposes of the taxes imposed by sections 3101(b) and 3111(b) subsection (b) shall be applied without regard to paragraph (5) thereof.

(2) STATE AND LOCAL EMPLOYMENT.—For purposes of the taxes imposed by sections 3101(b) and 3111(b)—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), subsection (b) shall be applied without regard to paragraph (7) thereof.

(B) EXCEPTION FOR CERTAIN SERVICES.—Service shall not be treated as employment by reason of subparagraph (A) if—

(i) the services is included under an agreement under section 218 of the Social Security Act, or

(ii) the service is performed—

(I) by an individual who is employed by a State or political subdivision thereof to relieve him from unemployment,

(II) in a hospital, home, or other institution by a patient or inmate thereof as an employee of a State or political subdivision thereof or of the District of Columbia,

(III) by an individual, as an employee of a State or political subdivision thereof or of the District of Columbia, serving on a temporary basis in case of fire, storm, snow, earthquake, flood or other similar emergency, **[or]**

(IV) by an individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or a medical or dental resident in training**[.]**, *or*

(V) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $100.

* * * * * * *

Subtitle D—Miscellaneious Excise Taxes

Chapter 31. Retail excise taxes.
Chapter 32. Manufacturers excise taxes.
Chapter 33. Facilities and services.
Chapter 34. Policies issued by foreign insurers.
Chapter 35. Taxes on wagering.
Chapter 36. Certain other exicise taxes.
Chapter 37. Sugar.
Chapter 39. Registration-required obligations.
Chapter 40. General provisions relating to occupational taxes.
[Chapter 41. Public charities.**]**
Chapter 41. Public charities; large employers not members of qualified State health insurance pools".
Chapter 42. Private foundations, black lung benefit trusts.
Chapter 43. Qualified pension, etc., plans.
Chapter 44. Real estate investment trusts.
Chapter 45. Windfall profit tax on domestic crude oil.

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CHAPTER 41—PUBLIC CHARITIES

CHAPTER 41—PUBLIC CHARITIES; LARGE EMPLOYERS NOT MEMBERS OF QUALIFIED STATE HEALTH INSURANCE POOLS

Subchapter A. Public charities.
Subchapter B. Large employers not members of qualified State health insurance pools.

Subchapter A—Public Charities

* * * * * * *

Subchapter B—Large Employers Not Members of Qualified State Health Insurance Pools

Sec. 4912. Tax on wages of large employers not members of qualified State health insurance pools.

SEC. 4912. TAX ON WAGES OF LARGE EMPLOYERS NOT MEMBERS OF QUALIFIED STATE HEALTH INSURANCE POOLS.

(a) Tax Imposed.—In the case of a large employer which—

(1) employs any individual to perform services in a State that has established a qualified health insurance pool, and

(2) is not a participating member of that pool in a taxable year at anytime at which such services are performed,

there is hereby imposed a tax equal to 5 percent of the wages paid by the employer during the taxable year for services performed in the State by its employees.

(b) Large Employer.—For purposes of this section—

(1) In general.—Except as provided in paragraph (2), the term "large employer" means an employer who, on each of some 20 days during the taxable year or the preceding taxable year, each day being in a different calendar week, employed for some portion of the day (whehrer or not at the same moment of time) 20 or more individuals.

(2) Exception for governmental units.—The term "large employer" shall not include the United States, any State or political subdivision thereof, or any possession of the United States or any agency or instrumentality of any of the foregoing (including the United States Postal Service and Postal Rate Commission); except that such term shall include any nonappropriated fund instrumentality of the United States.

(c) Qualified Health Insurance Pool.—For purposes of this section, the term "qualified health insurance pool" means any organization which—

(1) is a nonprofit corporation established pursuant to and regulated by State law;

(2) permits any large employer doing business in the State to be a participating members;

(3) makes available (without regard to health conditions) to all residents of the State, who are not eligible for benefits under part A of title XVIII of the Social Security Act, levels of health insurance typical of the levels of coverage provided through large employer groups, except that—

(A) any such level of insurance must limit the amount of the annual out-of-pocket expenses for covered services under individual coverage to $1,500 and under family coverage to $3,000,

(B) any such level of insurance may not establish a lifetime benefit limit for any individual of less than $500,000,

(C) subject to subparagraph (A), such insurance may provide for a choice of deductibles (in addition to the deductibles typical of levels of coverage provided through large em-

ployer groups), but not to exceed $1,000 for each covered individual,

(D) such insurance may deny coverage for covered services for preexisting conditions for a period not to exceed 6 months, and

(E) such insurance must include as covered services the purchase and repair of medically necessary durable medical equipment;

(4) charges a pool premium rate expected to be self-supporting based upon a reasonable actuarial determination of anticipated experience and expected expenses, such pool premium rate in no event to exceed 150 percent of average premium rates for individual standard risks in the State for comparable coverage; and

(5) assesses losses of the pool equitably among all participating members.

Nothing in this subsection shall be construed as preventing a State or other entity from providing for payment of part or all of the premium of an enrollee and from varying the amount of such payment based on the enrollee's income or other basis.

(d) OTHER DEFINITIONS.—

(1) USE OF FUTA DEFINITIONS.—For purposes of this section, the terms "wages", "employee", and "employer" have the meanings given such terms in subsections (a), (c), and (d), respectively, of section 3401.

(2) STATE.—The term "State" includes the District of Columbia and the Commonwealth of Puerto Rico.

(e) CROSS REFERENCE.—

(1) For provision denying deduction for tax imposed by this section, see section 275(a)(6).

(2) For provisions making deficiency procedures applicable to tax imposed by this section, see section 6211 et seq.

Subtitle F—Procedure and Administration

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CHAPTER 61—INFORMATION AND RETURNS

* * * * * * *

Subchapter B—Miscellaneous Provisions

* * * * * * *

SEC. 6104. PUBLICITY OF INFORMATION REQUIRED FROM CERTAIN EXEMPT ORGANIZATIONS AND CERTAIN TRUSTS.

(a) INSPECTION OF APPLICATIONS FOR TAX EXEMPTION.—

* * * * * * *

(c) PUBLICATION TO STATE OFFICIALS.—

(1) GENERAL RULE.—In the case of any organization which is described in section 501(c)(3) and exempt from taxation under section 501(a), or has applied under section 508(a) for recognition as an organization described in section 501(c)(3), the Secretary at such times and in such manner as he may by regulations prescribe shall—

(A) notify the appropriate State officer of a refusal to recognize such organization as an organization described in section 501(c)(3), or of the operation of such organization in a manner which does not meet, or no longer meets, the requirements of its exemption,

(B) notify the appropriate State officer of the mailing of a notice of deficiency of tax imposed under section 507 [or chapter 41 or 42], *subchapter A of chapter 41 or chapter 42,* and

(C) at the request of such appropriate State officer, make avaialble for inspection and copying such returns, filed statements, records, and other information, relating to a determination under subparagraph (A) or (B) as are relevant to any determination under State law.

(2) APPROPRIATE STATE OFFICER.—For purposes of this subsection, the term "appropriate State officer" means the State attorney general, State tax officer, or any State official charged with overseeing organizations of the type described in section 501(c0(3).

* * * * * * *

SECTION 114 OF THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

PAYMENTS TO HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS

SEC. 114. (a) * * *

* * * * * * *

(c)(1) * * *
(2)(A) * * *

* * * * * * *

(E) The preceding provisions of this paragraph shall not to apply to payments made for current, nonrisk medicare enrollees for months beginning with April 1987.

* * * * * * *

TITLE II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

* * * * * * *

EVIDENCE, PROCEDURE, AND CERTIFICATION FOR PAYMENT

SEC. 205. (a) * * *

* * * * * * *

(c)(1) For the purposes of this subsection—
(A) * * *

* * * * * * *

(D) The term "period" when used with respect to self-employment income means a taxable year and when used with respect to wages means—

(i) a quarter if wages were reported or should have been reported on a quarterly basis on tax returns filed with the Secretary of the Treasury or his delegate under section 6011 of the Internal Revenue Code of 1954 or regulations thereunder (or on reports filed by a State under section 218(e) *(as in effect prior to December 31, 1986)* or regulations thereunder),

(5) After the expiration of the time limitation following any year in which wages were paid or alleged to have been paid to, or self-employment income was derived or alleged to have been derived by, an individual, the Secretary may change or delete any entry with respect to wages or self-employment income in his records of such year for such individual or include in his records of such year for such individual any omitted item of wages or self-employment income but only—

(A) * * *

* * * * * * *

(F) to conform his records to —

(i) * * *

* * * * * * *

(iii) assessments of amounts due under an agreement pursuant to section 218 *(as in effect prior to December 31, 1986),* if such assessments are made within the period specified in subsection (q) of such section *(as so in effect),* or allowances of credits or refunds of overpayments by a State under an agreement pursuant to such section;

* * * * * * *

COMPUTATION OF PRIMARY INSURANCE AMOUNT

Sec. 215. For the purposes of this title—

(a) * * *

* * * * * * *

Cost-of-Living Increases in Benefits

(i)(1) For purposes of this subsection—

(A) * * *

(B) the term "cost-of-living computation quarter" means a base quarter, as defined in subparagraph (A)(i), with respect to which the applicable increase percentage is [3 percent or more;] *greater than zero;* except that there shall be no cost-of-living computation quarter in any calendar year if in the year prior to such year a law has been enacted providing a general benefit increase under this title or if in such prior year such a general benefit increase becomes effective;

* * * * * * *

(2)(A) * * *

* * * * * * *

[(c)(i) Whenever the level of the Consumer Price Index as published for any month exceeds by 2.5 percent or more the level of such index for the most recent base quarter (as defined in paragraph (1)(A)(ii)) or, if later, the most recent cost-of-living computation quarter, the Secretary shall (within 5 days after such publication) report the amount of such excess to the House Committee on Ways and Means and the Senate Committee on Finance.]

[(ii)] *(i)* Whenever the Secretary determines that a base quarter in a calendar year is also a cost-of-living computation quarter, he shall notify the House Committee on Ways and Means and the Senate Committee on Finance of such determination within 30 days after the close of such quarter, indicating the amount of the benefit increase to be provided, his estimate of the extent to which the cost of such increase would be met by an increase in the contribution and benefit base under section 230 and the estimated amount of the increase in such base, the actuarial estimates of the effect of such increase, and the actuarial assumptions and methodology used in preparing such estimates.

[(iii)] *(ii)* The Secretary shall determine and promulgate the OASDI fund ratio for the current calendar year and the SSA wage index for the preceding calendar year before November 1 of the current calendar year, based upon the most recent data then available, and shall include a statement of such fund ratio and wage index (and of the effect such ratio and the level of such index may have upon benefit increases under this subsection) in any notification made under clause [(ii)] *(i)* and any determination published under subparagraph (D).

* * * * * * *

(4) This subsection as in effect in December 1978, and as amended by sections 111(a)(6), 111(b)(2), and 112 of the Social Security Amendments of 1983 *and by section of the Omnibus Budget Reconciliation Act of 1986*, shall continue to apply to subsections (a) and (d), as then in effect, for purposes of computing the primary insurance amount of an individual to whom subsection (a), as in effect after December 1978, does not apply (including an individual to whom subsection (a) does not apply in any year by reason of paragraph (4)(B) of that subsection (but the application of this subsection in such cases shall be modified by the application of subdivision (I) in the last sentence of paragraph (4) of that subsection)), except that for this purpose, in applying paragraphs (2)(A)(ii), (2)(D)(iv), and (2)(D)(v) of this subsection as in effect in December 1978, the phrase "increased to the next higher multiple of $0.10" shall be deemed to read "decreased to the next lower multiple of $0.10". For purposes of computing primary insurance amounts and maximum family benefits (other than primary insurance amounts and maximum family benefits for individuals to whom such paragraph (4)(B) applies), the Secretary shall revise the table of benefits contained in subsection (a), as in effect in December 1978, in accordance with the requirements of paragraph (2)(D) of this subsection as then in effect, except that the requirement in such para-

graph (2)(D) that the Secretary publish such revision of the table of benefits in the Federal Register shall not apply.

(5)(A) If—

(i) with respect to any calendar year the "applicable increase percentage" was determined under clause (ii) of paragraph (1)(C) rather than under clause (i) of such paragraph, and the increase becoming effective under paragraph (2) in such year was accordingly determined on the basis of the wage increase percentage rather than the CPI increase percentage (or there was no such increase becoming effective under paragraph (2) in that year because **[**the wage increase percentage was less than 3 percent**]** *there was no wage increase percentage greater than zero*), and

* * * * * * *

[Section 215 of the Social Security Act, as in effect December 1978]

Computation of Primary Insurance Amount

Sec. 215. For the purposes of this title—

(a) * * *

Cost-of-Living Increases in Benefits

(i)(1) For purposes of this subsection—

(A) * * *

(B) the term "cost-of-living computation quarter" means a base quarter, as defined in subparagraph (A)(i), in which the Consumer Price Index prepared by the Department of Labor exceeds**[**, by not less than 3 per centum,**]** such Index in the later of (i) the last prior cost-of-living computation quarter which was established under this subparagraph, or (ii) the most recent calendar quarter in which occurred the effective month of a general benefit increase under this title; except that there shall be no cost-of-living computation quarter in any calendar year if in the year prior to such year a law has been enacted providing a general benefit increase under this title or if in such prior year such a general benefit increase becomes effective;

* * * * * * *

(C) **[**(i) Whenever the level of the Consumer Price Index as published for any month exceeds by 2.5 percent or more the level of such index for the most recent base quarter (as defined in paragaph (1) (A) (ii)) or, if later, the most recent cost-of-living computation quarter, the Secretary shall (within 5 days after such publication) report the amount of such excess to the House Committee on Ways and Means and the Senate Committee on Finance.**]**

[(ii)**]** *(i)* Whenever the Secretary determines that a base quarter in a calendar year is also a cost-of-living computation quarter, he shall notify the House Committee on Ways and Means and the Senate Committee on Finance of such determination within 30 days after the close of such quarter, indicating the amount of the benefit increase to be provided, his estimate of the extent to which the cost of such increase would be met by an increase **[**in the contribution and benefit base under section 230 and the estimated amount of the increase in such base**]**, the actuarial estimates of the effect of such increase, and the actuarial assumptions and methodology used in preparing such estimate.

[(iii)**]** *(ii)* The Secretary shall determine and promulgate the OASDI fund ratio for the current calendar year and the SSA wage index for the preceding calendar year before November 1, of the current calendar year, based upon the most recent data then available, and shall include a statement of such fund ratio and wage index (and of the effect such ratio and the level of such index may have upon benefit increases under this subsection) in any notification made under clause (ii) and any determination published under subparagraph (D).

* * * * * * *

VOLUNTARY AGREEMENTS FOR COVERAGE OF STATE AND LOCAL EMPLOYEES

Purpose of Agreement

SEC. 218. (a) * * *

* * * * * * *

POSITIONS COVERED BY RETIREMENT SYSTEMS

(d)(1) * * *

* * * * * * *

(6)(A) If a retirement system covers positions of employees of the State and positions of employees of one or more political subdivisions of the State, or covers positions of employees of two or more political subdivisions of the State, then, for purposes of the preceding paragraphs of this subsection, there shall, if the State so desires, be deemed to be a separate retirement system with respect to any one or more of the political subdivisions concerned and, where the retirement system covers positions of employees of the State, a separate retirement system with respect to the State or with respect to the State and any one or more of the political subdivisions concerned. Where a retirement system covering positions of employees of a State and positions of employees of one or more political subdivisions of a State, or covering positions of employees of two or more political subdivisions of the State, is not divided into separate retirement systems pursuant to the preceding sentence or pursuant to subparagraph (C), then the State may, for purposes of subsection **[**(f)**]** *(e)* only, deem the system to be a separate retirement system with respect to any one or more of the political subdivisions concerned and, where the retirement system covers positions of employees of the State, a separate retirement system with respect to the State or with respect to the State and any one or more of the political subdivisions concerned.

* * * * * * *

(F) In the case of any retirement system divided pursuant to subparagraph (C), the position of any member of the division or part composed of positions of members who do not desire coverage may be transferred to the separate retirement system composed of positions of members who desire such coverage if it is so provided in a modification of such agreement which is mailed, or delivered by other means, to the Secretary prior to 1970 or, if after, the expiration of two years after the date on which such agreement, or the rate retirement system, as the case may be, is agreed to, but only if, prior to such modification or such later modification, as the case may be, the individual occupying such position files with the State a written request for such transfer. Notwithstanding subsection [(f)(1),] *(e)(1),* any such modification or later modification, providing for the transfer of additional positions within a retirement system previously divided pursuant to subparagraph (C) to the separate retirement system composed of positions of member who desire coverage, shall be effective with respect to services performed after the same effective date as that which was specified in the case of such previous division.

* * * * * * *

(8)(A) * * *

* * * * * * *

(D) Except in the case of agreements with the States named in subsection [(p)] *(l)* and agreements with interstate instrumentalities, nothing in this paragraph shall authorize the application of an agreement to service in any policeman's or fireman's position.

[Payments and Reports by States

[(e)(1) Each agreement under this section shall provide—

[(A) that the State will pay to the Secretary of the Treasury—

[(i) on the last day of each calendar month, amounts equivalent to the sum of the taxes which would be imposed by sections 3101 and 3111 of the Internal Revenue Code of 1954 with respect to the period which includes the first fifteen days of such calendar month if the services for which wages were paid in such period to employees covered by the agreement constituted employment as defined in section 3121 of such Code, and

[(ii) on the fifteenth day of the calendar month following such calendar month, amounts equivalent to the sum of the taxes which would be imposed by sections 3101 and 3111 of such Code with respect to the period beginning with the sixteenth day of such calendar month and ending with the last day of such calendar month if the services for which wages were paid in such period to employees covered by the agreement constituted employment as defined in section 3121 of such Code; and

[(B) that the State will comply with such regulations relating to payments and reports as the Secretary of Health, Education, and Welfare may prescribe to carry out the purposes of this section.

[(2) Where—

[(A) an individual in any calendar year performs services to which an agreement under this section is applicable (i) as the employee of two or more political subivisions of a State or (ii) as the employee of State and one or more political subdivisions of such State; and

[(B) such State provides all of the funds for the payment of those amounts referred to in paragraph (1)(A) which are equivalent to the taxes imposed by section 3111 of the Internal Revenue Code of 1954 with respect to wages paid to such individual for such services; and

[(C) the political subdivision or subdivisions involved do not reimburse such State for the payment of such amounts or, in the case of services described in subparagraph (A)(ii), for the payment of so much of such amounts as is attributable to employment by such subdivision or subdivisions;

then, notwithstanding paragraph (1), the agreement under this section with such State may provide (either in the original agreement or by a modification thereof) that the amounts referred to in paragraph (1)(A) may be computed as though the wages paid to such individual for the services referred to in clause (A) of this paragraph were paid by one political subdivision for services performed in its employ; but the provisions of this paragraph shall be applicable only where such State complies with such regulations as the Secretary may prescribe to carry out the purposes of this paragraph. The preceding sentence shall be applicable with respect to wages paid after an effective date specified in such agreement or modification, but in no event with respect to wages paid before (i) January 1, 1957, in the case of an agreement or modification which is mailed or delivered by other means to the Secretary before January 1, 1962, or (ii) the first day of the year in which the agreement or modification is mailed or delivered by other means to the Secretary, in the case of an agreement or modification which is so mailed or delivered on or after January 1, 1962.]

Effective Date of Agreement

[(f)]*(e)*(1) [Except as provided in subsection (e)(2), any] *Any* agreement or modification of an agreement under this section shall be effective with respect to services performed after an effective date specified in such agreement or modification; except that such date may not be earlier than the last day of the sixth calendar year preceding the year in which such agreement or modification, as the case may be, is mailed or delivered by other means to the Secretary.

* * * * * * *

Duration of Agreement

[(g)]*(f)* No agreement under this section may be terminated, either in its entirety or with respect to any coverage group, on or after the date of the enactment of the Social Security Amendments of 1983.

[Deposits in Trust Fund; Adjustments

[(h)(1) All amounts received by the Secretary of the Treasury under an agreement made pursuant to this section shall be deposited in the Trust Funds and the Federal Hospital Insurance Trust Fund in the ratio in which amounts are appropriated to such Funds pursuant to subsection (a)(3) of section 201, subsection (b)(1) of such section, and subsection (a)(1) of section 1817, respectively.

[(2) If more or less than the correct amount due under an agreement made pursuant to this section is paid with respect to any payment of remuneration, proper adjustments with respect to the amounts due under such agreement shall be made, without interest, in such manner and at such times as may be prescribed by regulations of the Secretary.

[(3) If an overpayment cannot be adjusted under paragraph (2), the amount thereof and the time or times it is to be paid shall be certified by the Secretary to the Managing Trustee, and the Managing Trustee, through the Fiscal Service of the Treasury Department and prior to any action thereon by the General Accounting Office, shall make payment in accordance with such certification. The Managing Trustee shall not be held personally liable for any payment or payments made in accordance with a certification by the Secretary.

[Regulations

[(i) Regulations of the Secretary to carry out the purposes of this section shall be designed to make the requirements imposed on States pursuant to this section the same, so far as practicable, as those imposed on employers pursuant to this title and chapter 21 and subtitle F of the Internal Revenue Code of 1954.

[Failure To Make Payments

[(j) In case any State does not make, at the time or times due, the payments provided for under an agreement pursuant to this section, there shall be added, as part of the amounts due, interest at the rate of 6 per centum per annum from the date due until paid, and the Secretary may, in his discretion, deduct such amounts plus interest from any amounts certified by him to the Secretary of the Treasury for payment to such State under any other provision of this Act. Amounts so deducted shall be deemed to have been paid to the State under such other provision of this Act. Amounts equal to the amounts deducted under this subsection are hereby appropriated to the Trust Funds in the ratio in which amounts are deposited in such Funds pursuant to subsection (h)(1).]

Instrumentalities of Two or More States

[(k)] *(g)*(1) The Secretary may, at the request of any instrumentality of two or more states, enter into an agreement with such instrumentality for the purpose of extending the insurance system established by this title to services performed by individual as employees of such instrumentality. Such agreement, to the extent practicable, shall be governed by the provisions of this section applicable in the case of an agreement with a State.

* * * * * * *

Delegation of Functions

[(l)] *(h)* The Secretary is authorized, pursuant to agreement with the head of any Federal agency, to delegate any of his functions under this section to any officer or employee of such agency and otherwise to utilize the services and facilities of such agency in carrying out such functions, and payment therefor shall be in advance or by way of reimbursement, as may be provided in such agreement.

Wisconsin Retirement Fund

[(m)] *(i)(1)* Notwithstanding paragraph (1) of subsection (d), the agreement with the State of Wisconsin may, subject to the provision of this subsection, be modified so as to apply to service performed by employees in positions covered by the Wisconsin retirement fund or any successor system.

* * * * * * *

Certain Positions No Longer Covered by Retirement Systems

[(n)] *(j)* Notwithstanding subsection (d), an agreement with any State entered into under this section prior to the date of the enactment of this subsection may, prior to January 1, 1958, be modified pursuant to subsection (c)(4) so as to apply to services performed by employees, as members of any coverage group to which such agreement already applies (and to which such agreement applied on such date of enactment, in positions (1) to which such agreement does not already apply, (2) which were covered by a retirement system on the date such agreement was made applicable to such coverage group, and (3) which, by reason of action by such State or political subdivision thereof, as may be appropriate, taken prior to the date of the enactment of this subsection, are no longer covered by a retirement system on the date such agreement is made applicable to such services.

Certain Employees of the State of Utah

[(o)] *(k)* Notwithstanding the provisions of subsection (d), the agreement with the state of Utah entered into pursuant to this section may be modified pursuant to subsection (c)(4) so as to apply to services performed for any of the following, the employees performing services for each of which shall constitute a separate coverage group: Weber Junior College, Carbon Junior College, Dixie Junior College, Central Utah Vocational School, Salt Lake Area Vocational School, Center for the Adult Blind, Union High School (Roosevelt, Utah), Utah High School Activities Association, State Industrial School, State Training School, State Board of Education, and Utah School Employees Retirement Board. Any modification agreed to prior to January 1, 1955, may be made effective with respect to services performed by employees as members of any such coverage groups after an effective date specified therein, except that in no case may any such date be earlier than December 31, 1950. Coverage provided for in this subsedction shall not be affected by a subsequent change in the name of a group.

Policemen and Firemen in Certain States

[(p)]*(l)*(1) Any agreement with the State of Alabama, California, Florida, Georgia, Hawaii, Idaho, Kansas, Maine, Maryland, Mississippi, Montana, New York, North Carolina, North Dakota, Oregon, Puerto Rico, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, or Washington entered into pursuant to this section prior to the date of enactment of this subsection may notwithstanding the provisions of subsection (d)(5)(A) and the references thereto in subsections (d)(1) and (d)(3), be modified pursuant to subsection (c)(4) to apply to service performed by employees of such State or any political subdivision thereof in any policeman's or fireman's position covered by a retirement system in effect on or after the date of the enactment of this subsection, but only upon compliance with the requirements of subsection (d)(3). For the purposes of the preceding sentence, a retirement system which covers positions of policemen or firemen, or both, and other positions shall, if the State concerned so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

(2) A State, not otherwise listed by name in paragraph (1), shall be deemed to be a State listed in such paragraph for the purpose of extending coverage under this title to service in firemen's positions covered by a retirement system, if the governor of the State, or an official of the State designated by him for the purpose, certifies to the Secretary that the overall benefit protection of the employees in such positions would be improved by reason of the extension of such coverage to such employees. Notwithstanding the provisions of the second sentence of such paragraph (1), such firemen's positions shall be deemed a separate retirement system and no other positions shall be included in such system.

[TIME LIMITATIONS ON ASSESSMENTS

[(q)(1) Where a State is liable for an amount due under an agreement pursuant to this section, such State shall remain so liable until the Secretary is satisfied that the amount due has been paid to the Secretary of the Treasury.

[(2) Notwithstanding paragraph (1), a State shall not be liable for an amount due under an agreement pursuant to this section, with respect to the wages paid to individuals, after the expiration of the latest of the following periods—

[(A) three years, three months, and fifteen days after the year in which such wages were paid, or

[(B) three years after the date on which such amount became due, or

[(C) three years, three months, and fifteen days after the year following the year in which this subsection is enacted,

unless prior to the expiration of such period the Secretary makes an assessment of the amount due.

[(3) For purposes of this subsection and section 205(c), an assessment of an amount due is made when the Secretary mails or otherwise delivers to the State a notice stating the amount he has determined to be due under an agreement pursuant to this section and the basis for such determination.

[(4) An assessment of an amount due made by the Secretary after the expiration of the period specified in paragraph (2) shall nevertheless be deemed to have been made within such period if—

[(A) before the expiration of such period (or, if it has previously been extended under this paragraph, of such period as so extended), the State and the Secretary agree in writing to an extension of such period (or extended period) and, subject to such conditions as may be agreed upon, the Secretary makes the assessment prior to the expiration of such extension; or

[(B) within the 365 days immediately preceding the expiration of such period (or extended period) the State pays to the Secretary of the Treasury less than the correct amount due under an agreement pursuant to this section with respect to wages paid to individuals in a calendar year as members of a coverage group, and the Secretary of Health and Human Services makes the assessment, adjusted to take into account the amount paid by the State, no later than the 365th day after the day the State made payment to the Secretary of the Treasury; but the Secretary of Health and Human Services shall make such assessment only with respect to the wages paid to such individuals in such calendar year as members of such coverage group; or

[(C) pursuant to subparagraph (A) or (B) of section 205(c)(5) he includes in his records an entry with respect to wages for an individual, but only if such assessment is limited to the amount due with respect to such wages and is made within the period such entry could be made in such records under such subparagraph.

[(5) If the Secretary allows a claim for a credit or refund of an overpayment by a State under an agreement pursuant to this section, with respect to wages paid or alleged to have been paid to an individual in a calendar year for services as a member of a coverage group, and if as a result of the facts on which such allowance is based there is an amount due from the State, with respect to wages paid to such individual in such calendar year for services performed as a member of a coverage group, for which amount the State is not liable by reason of paragraph (2), then notwithstanding paragraph (2) the State shall be liable for such amount due if the Secretary makes an assessment of such amount due at the time of or prior to notification to the State of the allowance of such claim. For purposes of this paragraph and paragraph (6), interest as provided for in subsection (j) shall not be included in determining the amount due.

[(6) The Secretary shall accept wage reports filed by a State under an agreement pursuant to this section or regulations of the Secretary thereunder, after the expiration of the period specified in paragraph (2) or such period as extended pursuant to paragraph (4), with respect to wages which are paid to individuals performing services as employees in a coverage group included in the agreement and for payment in connection with which the State is not liable by reason of paragraph (2), only if the State—

[(A) pays to the Secretary of the Treasury the amount due under such agreement with respect to such wages, and

[(B) agrees in writing with the Secretary of Health and Human Services to an extension of the period specified in paragraph (2) with respect to wages paid to all individuals performing services as employees in such coverage group in the period or periods designated by the State in such wage reports as the period or period in which such wages were paid. If the State so agrees, the period specified in paragraph (2), or such period as extended pursuant to paragraph (4), shall be extended until such time as the Secretary notifies the State that such wage reports have been accepted.

[(7) Notwithstanding the preceding provisions of this subsection, where there is an amount due by a State under an agreement pursuant to this section and there has been a fraudulent attempt on the part of an officer or employee of the State or any political subdivision thereof to defeat or evade payment of such amount due, the State shall be liable for such amount due without regard to the provisions of paragraph (2), and the Secretary may make an assessment of such amount due at any time.

[Time Limitation on Credits and Refunds

[(r)(1) No credit refund of an overpayment by a State under an agreement pursuant to this section with respect to wages paid or alleged to have been paid to an individual as a member of a coverage group in a calendar year shall be allowed after the expiration of the latest of the following periods—

[(A) three years, three months, and fifteen days after the year in which such wages were paid or alleged to have been paid, or

[(B) three years after the date the payment which included such overpayment became due under such agreement with respect to the wages paid or alleged to have been paid to such individual as a member of such coverage group in such calendar year, or

[(C) two years after such overpayment was made to the Secretary of the Treasury, or

[(D) three years, three months, and fifteen days after the year following the year in which this subsection is enacted,

unless prior to the expiration of such period a claim for such credit or refund is filed with the Secretary of Health and Human Services by the State.

[(2) A claim for a credit or refund filed by a State after the expiration of the period specified by paragraph (1) shall nevertheless be deemed to have been filed within such period if—

[(A) before the expiration of such period (or, if it has previously been extended under this subparagraph, of such period as so extended) the State and the Secretary agree in writing to an extension of such period (or extended period) and the claim is filed with the Secretary by the State prior to the expiration of such extension; but any claim for a credit or refund valid because of this subparagraph shall be allowed only to the extent authorized by the conditions provided for in the agreement for such extension, or

[(B) the Secretary deletes from his records an entry with respect to wages of an individual pursuant to the provisions of subparagraph (A), (B), or (E) of section 205(c)(5), but only with respect to the entry so deleted.

[Review by Secretary

[(s) Where the Secretary has made an assessment of an amount due by a State under an agreement pursuant to this section, disallowed a State's claim for a credit or refund of an overpayment under such agreement, or allowed a State a credit or refund of an overpayment under such agreement, he shall review such assessment, disallowance, or allowance if a written request for such review is filed with him by the State within 90 days (or within such further time as he may allow) after notification to the State of such assessment, disallowance, or allowance. On the basis of the evidence obtained by or submitted to the Secretary, he shall render a decision affirming, modifying, or reversing such assessment, disallowance, or allowance. In notifying the State of his decision, the Secretary shall state the basis therefor.

[Review by Court

[(t)(1) Notwithstanding any other provision of this title any State, irrespective of the amount in controversy, may file, within two years after the mailing to such State of the notice of any decision by the Secretary pursuant to subsection (s) affecting such State, or within such further time as the Secretary may allow, a civil action for a redetermination of the correctness of the assessment of the amount due, the disallowance of the claim for a refund or credit, or the allowance of the refund or credit, as the case may be, with respect to which the Secretary has rendered such decision. Such action shall be brought in the district court of the United States for the judicial district in which is located the capital of such State, or, if such action is brought by an instrumentality of two or more States, the principal office of such instrumentality. The judgment of the court shall be final, except that it shall be subject to review in the same manner as judgments of such court in other civil actions. Any action filed under this subsection shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

[(2) Notwithstanding the provisions of section 2411 of title 28, United States Code, no interest shall accrue to a State after final judgment with respect to a credit or refund of an overpayment made under an agreement pursuant to this section.

[(3) The first sentence of section 2414 of title 28, United States Code, shall not apply to final judgments rendered by district courts of the United States in civil actions filed under this subsection. In such cases, the payment of amounts due to States pursuant to such final judgments shall be adjustd in accordance with the provisions of this section and with regulations promulgated by the Secretary.]

Positions Compensated Solely on a Fee Basis

[(u)]*(m)*(1) Notwithstanding any other provision in this section, an agreement entered into under this section may be made applicable to service performed after 1967 in any class or classes of positions compensated solely on a fee basis to which such agreement did not apply prior to 1968 only if the State specifically requests that its agreement be made applicable to such service in such class or classes of positions.

* * * * * * *

REDUCTION OF BENEFITS BASED ON DISABILITY

SEC. 224. (a) If for any month prior to the month in which an individual attains the age of 65—

(1) * * *

(2) such individual is entitled for such month to—

(A) periodic benefits on account of his or her total or partial disability (whether or not permanent) under a workmen's compensation law or plan of the United States or a State, or

(B) periodic benefits on account of his or her total or partial disability (whether or not permanent) under any other law or plan of the United States, a State, a political subdivision (as that term is used in section 218(b)(2)), or an instrumentality of two or more States (as that term is used in section [218(k)] *218(g)*), other than (i) benefits payable under title 38, United States Code, (ii) benefits payable under a program of assistance which is based on need, (iii) benefits based on service all or substantially all of which was included under an agreement entered into by a State and the Secretary under section 218, and (iv) benefits under a law or plan of the United States based on service all or substantially all of which is employment as defined in section 210,

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TITLE IV—GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES

* * * * * * *

PART A—AID TO FAMILIES WITH DEPENDENT CHILDREN

* * * * * * *

STATE PLANS FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN

SEC. 402. (a) A State plan for aid and services to needy families with children must—

(1) * * *

* * * * * * *

(38) provide that in making the determination under paragraph (7) with respect to a dependent child and applying paragraph (8), the State agency shall (except as otherwise provided in this part) include—

(A) any parent of such child, and

(B) any brother or sister of such child, if such brother or sister meets the conditions described in clauses (1) and (2) of section 406(a), if such parent, brother, or sister is living in the same home as the dependent child, and any income of or available for such parent, brother, or sister shall be included in making such determination and applying such paragraph with respect to the family (notwithstanding section 205(j), in the case of benefits provided under title II); **[**and**]**

(39) provide that in making the determination under paragraph (7) with respect to a dependent child whose parent or legal guardian is under the age selected by the State pursuant to section 406(a)(2), the State agency shall (except as otherwise provided in this part) include any income of such minor's own parents or legal guardians who are living in the same home as such minor and dependent child, to the same extent that income of a stepparent is included under paragraph (31)**[**.**]***; and*

(40) provide that payments of aid will be made under the plan with respect to dependent children of unemployed parents, in accordance with section 407.

* * * * * * *

DEPENDENT CHILDREN OF UNEMPLOYED PARENTS

SEC. 407. (a) * * *

[(b) The provisions of subsection (a) shall be applicable to a State if the State's plan approved under section 402—

[(1) requires**]** *(b) In providing for the payment of aid under the State's plan approved under section 402 in the case of families which include dependent children within the meaning of subsection (a) of this section, as required by section 402(a)(40), the State's plan—*

(1) shall require the payment of aid to families with dependent children with respect to a dependent child as defined in subsection (a) when—

(A) * * *

* * * * * * *

(C)(i) such parent has 6 or more quarters of work (as defined in subsection (d)(1)), *including 2 or more quarters of work as defined in subsection (d)(1)(A),* in any 13-calendar-quarter period ending within one year prior to the application for such aid or (ii) such parent received unemployment compensation under an unemployment compensation law of a State or of the United States, or such parent was qualified (within the meaning of subsection (d)(3)) for unemployment compensation under the unemployment compensation law of the State, within one year prior to the application for such aid; and

(2) [provides—] *shall provide—*

(A) for such assurances as will satisfy the Secretary that unemployed parents of dependent children as defined in subsection (a) will be certified to the Secretary of Labor as provided in section 402(a)(19) within 30 days after receipt of aid with respect to such children;

* * * * * * *

(d) For purposes of this section—

(1) the term "quarter of work" with respect to any individual means a calendar quarter *(A)* in which such individual received earned income of not less than $50 (or which is a "quarter of coverage" as defined in section 213(a)(2)), or in which such individual participated in a community work experience program under section 409, or the work incentive program established under part C, *or (B) if the State plan so provides (but subject to the last sentence of this subsection), in which such individual (i) was in regular full-time attendance as a student at an elementary or secondary school, (ii) was in regular full-time attendance in a course of vocational or technical training designed to fit him or her for gainful employment, or (iii) participated in an education or training program established under the Job Training Partnership Act;*

* * * * * * *

(4) the phrase "whichever of such child's parents is the principal earner", in the case of any child, means whichever parent, in a home in which both parents of such child are living, earned the greater amount of income in the 24-month period the last month of which immediately precedes the month in which an application is filed for aid under this part on the basis of the unemployment of a parent, for each consecutive month for which the family receives such aid on that basis.

No individual shall be credited during his or her lifetime (for purposes of subsection (b)(1)(C)(i)) with more than 4 "quarters of work" based on attendance in a course or courses of vocational or technical training as described in paragraph (1)(B)(ii) of this subsection.

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TITLE XI—GENERAL PROVISIONS AND PEER REVIEW

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PART A—GENERAL PROVISIONS

* * * * * * *

INCOME AND ELIGIBILITY VERFICATION SYSTEM

SEC. 1137. (a) In order to meet the requirements of this section, a State must have in effect an income and eligibility verification system under which—

(1) * * *

* * * * * * *

(4) the State agencies administering the programs listed in subsection (b) adhere to standardized formats and procedures established by the Secretary of Health and Human Services (in consultation with the Secretary of Agriculture) under which—

(A) * * *

* * * * * * *

(C) the use of such information shall be targeted to those uses which are most likely to be productive in identifying and preventing ineligibility and incorrect payments, *and no State shall be required to use such information to verify the eligibility of all recipients,*

* * * * * * *

TITLE XVIII—HEALTH INSURANCE FOR THE AGED AND DISABLED

* * * * * * *

PART B—SUPPLEMENTARY MEDICAL INSURANCE BENEFITS FOR THE AGED AND DISABLED

* * * * * * *

AMOUNTS OF PREMIUMS

SEC. 1839. (a) * * *

* * * * * * *

(f)(1) * * *

(2) If paragraph (1) does not apply to the monthly premiums for 1986, 1987, or 1988, if an individual is entitled to monthly benefits under section 202 or 223 for November and for December in the preceding year, and if the monthly premium for that December and for the following January is deducted from those benefits under section 1840(a)(1), the monthly premium for that individual for that January and for each of the succeeding 11 months for which he is entitled to benefits under section 202 or 223 shall (except as otherwise provided in subsection (b)) be the greater of—

[(A) the monthly premium amount determined under subsection (a)(2) for that January reduced by the amount (if any) necessary to make the monthly benefits under section 202 or 223 for that December after the deduction of the monthly premium (disregarding subsection (b)) for that January at least equal to the monthly benefits under section 202 or 223 for the preceding November after the deduction of the premium (disregarding subsection (b)) for that individual for that December, or]

(A) the monthly premium amount determined under subsection (a)(2) for that January reduced by the amount (if any) by which the monthly benefit under section 202 or 223 for that November, after the deduction of the premium (disregarding subsection (b)) for that individual for that December and after

rounding under section 215(g), would exceed the monthly benefit under section 202 or 223 for that December, after the deduction of the monthly premium amount determined under subsection (a)(2) (disregarding subsection (b)) for that individual for that January and after rounding under section 215(g), or

* * * * * * *

INTERNAL REVENUE CODE

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Subtitle A—Income Taxes

* * * * * * *

CHAPTER 2—TAX ON SELF-EMPLOYMENT INCOME

* * * * * * *

SEC. 1402. DEFINITIONS.

(a) NET EARNINGS FROM SELF-EMPLOYMENT.— * * *

(b) SELF-EMPLOYMENT INCOME.—The term "self-employment income" means the net earning from self-employment derived by an individual (other than a nonresident alien individual, except as provided by an agreement under section 233 of the Social Security Act) during any taxable year; except that such term shall not include—

(1) that part of the net earnings from self-employment which is in excess of (i) an amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act*) which is effective for the calendar year in which such taxable year begins, minus (ii) the amount of the wages paid to such individual during such taxable years; or

(2) the net earnings from self-employment, if such net earnings for the taxable year are less than $400.

For purposes of clause (1), the term "wages" (A) includes such remuneration paid to an employee for services included [under an agreement entered into pursuant to the provisions of section 218 of the Social Security Act (relating to coverage of State employees), or] under an agreement entered into pursuant to the provisions of section 3121(1) (relating to coverage of citizens of the United States who are employees of foreign affiliates of American employers), as would be wages under section 3121(a) if such services constituted employment under section 3121(b), (B) includes compensation which is subject to the tax imposed by section 3201 or 3211, and (C) includes, but only with respect to the tax imposed by section 1401(b), remuneration paid for medicare qualified government employment (as defined in section 3121(u)(3)) which is subject to the taxes imposed by sections 3101(b) and 3111(b). An individual who is not a citizen of the United States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa shall not, for purposes of this chapter be considered to be a nonresident alien individual.

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CHAPTER 21—FEDERAL INSURANCE CONTRIBUTIONS ACT

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Subchapter C—General Provisions

Sec. 3121. Definitions.
Sec. 3122. Federal service.
Sec. 3123. Deductions as constructive payments.
Sec. 3124. Estimate of revenue reduction.
Sec. 3125. Returns in the case of governmental employees in States, Guam, American Samoa, and the District of Columbia.
[Sec. 3126. Short title.]
Sec. 3126. Return and payment by governmental employer.
Sec. 3127. Short title.

SEC. 3121. DEFINITIONS.

(a) Wages.—* * *

(b) Employment.—For purposes of this chapter, the term "employment" means any service, of whatever nature, performed (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen of the United States [a citizen or resident of the United States (effective for remuneration paid after December 31, 1983)] as an employee for an American employer (as defined in subsection (h)), or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 233 of the Social Security Act; except that such term shall not include—

(1) * * *

* * * * * * *

(7) service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, except that this paragraph shall not apply in the case of—

(A) * * *

* * * * * * *

(C) service performed in the employ of the District of Columbia or any instrumentality which is wholly owned thereby, if such service is not covered by a retirement system established by a law of the United States; except that the provisions of this subparagraph shall not be applicable to service performed—

(i) in a hospital or penal institution by a patient or inmate thereof;

(ii) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or as a medical or dental resident in training;

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or other similar emergency; or

(iv) by a member of a board, committee, or council of the District of Columbia, paid on a per diem, meeting, or other fee basis, [or]

(D) service performed in the employ of the Government of Guam (or any instrumentality which is wholly owned by such Government) by an employee properly classified as a temporary or intermittent employee, if such service is not covered by a retirement system established by a law of Guam; except that (i) the provisions of this subparagraph shall not be applicable to services performed by an elected official or a member of the legislature or in a hospital or penal institution by a patient or inmate thereof, and (ii) for purposes of this subparagraph, clauses (i) and (ii) of subparagraph (B) shall apply[;]*, or*

(E) service included under an agreement entered into pursuant to section 218 of the Social Security Act;

* * * * * * *

(d) EMPLOYEE.—For purposes of this chapter, the term "employee" means—

(1) * * *

* * * * * * *

(3) any individual who performs services that are included under an agreement entered into pursuant to section 218 of the Social Security Act; or

[(3)] *(4)* any individual (other than an individual who is an employee under paragraph (1) or (2)) who performs services for remuneration for any person—

(A) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, bakery products, beverages (other than milk), or laundry or drycleaning services, for his principal;

(B) as a full-time life insurance salesman;

(C) as a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him; or

(D) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations;

* * * * * * *

SEC. 3126. RETURN AND PAYMENT BY GOVERNMENTAL EMPLOYER.

If the employer is a State or political subdivision thereof, or an agency or instrumentality of any one or more of the foregoing, the return of the amount deducted and withheld upon any wages under section 3101 and the amount of the tax imposed by section 3111 may be made by any officer or employee of such State or political subdivision or such agency or instrumentality, as the case may be, having control of the payment of such wages, or appropriately designated for that purpose.

SEC. [3126.] *3127.* SHORT TITLE.

This chapter may be cited as the "Federal Insurance Contributions Act."

CHAPTER 23—FEDERAL UNEMPLOYMENT TAX ACT

* * * * * * *

SEC. 3301. RATE OF TAX.

There is hereby imposed on every employer (as defined in section 3306(a)) for each calendar year an excise tax, with respect to having individuals in his employ, equal to—

(1) 6.2 percent, in the case of a calendar year beginning before the first calendar year after [1976,] *1989,* as of January 1 of which there is not a balance of repayable advances made to the extended unemployed compensation account (established by section 905(a) of the Social Security Act); or

* * * * * * *

SEC. 3306. DEFINITIONS.

(a) EMPLOYER.— * * *

* * * * * * *

(i) EMPLOYER.—For purposes of this chapter, the item "employee" has the meaning assigned to such term by section 3121(d), except that [subparagraphs (B) and (C) of paragraph (3)] *paragraph (3) and subparagraphs (B) and (C) of paragraph (4)* shall not apply.

* * * * * * *

SEC. 3311. SHORT TITLE.

This chapter may be cited as the "Federal Unemployment Tax Act."

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Subtitle D—Miscellaneous Excise Taxes

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CHAPTER 33—FACILITIES AND SERVICES

* * * * * * *

SEC. 4251. IMPOSITION OF TAX.

(a) TAX IMPOSED.— * * *

(b) DEFINITIONS.—For purposes of subsection (a)—

(1) * * *

(2) APPLICABLE PERCENTAGE.—The term "applicable percentage" means—

[With respect to amounts paid pursuant to bills first rendered:	*The applicable percentage is:*
[During 1983, 1984, 1986 or 1987	3
[During 1988 or thereafter	[0.]

With respect to amounts paid pursuant to bills first rendered:	*The applicable percentage is:*
During 1987, 1988, or 1989	*3*
During 1990 or thereafter	*0.*

* * * * * * *

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